

Title 1

GENERAL PROVISIONS

Chapters

- 1.08 Statute law committee (code reviser).**
1.12 Rules of construction.
1.20 General provisions.

Chapter 1.08 RCW

STATUTE LAW COMMITTEE (CODE REVISER)

Sections

1.08.007	Committee meetings.
1.08.015	Codification and revision of laws—Scope of revision. (<i>Effective July 1, 2013.</i>)
1.08.016	Code correction—Committee orders.
1.08.026	Examination of code—Hearings—Recommendations to legislature.
1.08.028	Opinions as to validity or constitutionality.
1.08.033	Reviser's office location.
1.08.037	Publication of code—Specifications—Certificate of compliance.
1.08.039	Publication, sale, and distribution of code and supplements—Contracts or other arrangements.
1.08.070	Legislators to receive codes and supplements on digital media without charge.
1.08.080	Statute law committee publications to be permanently available in digital form on legislative web sites.

1.08.007 Committee meetings. The committee shall from time to time elect a chair from among its members and adopt rules to govern its procedures. Four members of the committee shall constitute a quorum for the transaction of any business but no proceeding of the committee shall be valid unless carried by the vote of a majority of the members present. The code reviser or a member of his or her staff shall act as secretary of the committee. [2011 c 336 § 1; 2005 c 409 § 3; 1953 c 257 § 3; 1951 c 157 § 4.]

Effective date—2005 c 409: See note following RCW 1.08.001.

1.08.015 Codification and revision of laws—Scope of revision. (*Effective July 1, 2013.*) Subject to such general policies as may be promulgated by the committee and to the general supervision of the committee, the reviser shall:

(1) Codify for consolidation into the Revised Code of Washington all laws of a general and permanent nature heretofore or hereafter enacted by the legislature, and assign permanent numbers as provided by law to all new titles, chapters, and sections so added to the revised code.

(2) Edit and revise such laws for such consolidation, to the extent deemed necessary or desirable by the reviser and without changing the meaning of any such law, in the following respects only:

(a) Make capitalization uniform with that followed generally in the revised code.

(b) Make chapter or section division and subdivision designations uniform with those followed in the revised code, except that for chapter 62A.9A RCW, the reviser shall make section division and subdivision designations uniform with those followed by the national conference of commissioners on uniform state laws for Article 9 of the uniform commercial code.

(c) Substitute for the term "this act," where necessary, the term "section," "part," "code," "chapter," or "title," or reference to specific section or chapter numbers, as the case may require.

(d) Substitute for reference to a section of an "act," the proper code section number reference.

(e) Substitute for "as provided in the preceding section" and other phrases of similar import, the proper code section number references.

(f) Substitute the proper calendar date for "effective date of this act," "date of passage of this act," and other phrases of similar import.

(g) Strike out figures where merely a repetition of written words, and substitute, where deemed advisable for uniformity, written words for figures.

(h) Rearrange any misplaced statutory material, incorporate any omitted statutory material as well as correct manifest errors in spelling, and manifest clerical or typographical errors, or errors by way of additions or omissions.

(i) Correct manifest errors in references, by chapter or section number, to other laws.

(j) Correct manifest errors or omissions in numbering or renumbering sections of the revised code.

(k) Rearrange the order of sections to conform to such logical arrangement of subject matter as may most generally be followed in the revised code, and alphabetize definition sections, when to do so will not change the meaning or effect of such sections.

(l) Change the wording of section captions, if any, and provide captions to new chapters and sections.

(m) Strike provisions manifestly obsolete.

(3) Create new code titles, chapters, and sections of the Revised Code of Washington, or otherwise revise the title, chapter and sectional organization of the code, all as may be required from time to time, to effectuate the orderly and logical arrangement of the statutes. Such new titles, chapters, and sections, and organizational revisions, shall have the same force and effect as the ninety-one titles originally enacted and designated as the "Revised Code of Washington" pursuant to the code adoption acts codified in chapter 1.04 RCW. [2011 c 74 § 801; 2009 c 186 § 1; 1961 c 246 § 1; 1953 c 257 § 4; 1951 c 157 § 7.]

Application—Correction of references—Effective date—2011 c 74: See notes following RCW 62A.9A-102.

1.08.016 Code correction—Committee orders. The committee may at any time by order correct any section or portion of the code in any of the respects enumerated in RCW 1.08.015. Orders shall be numbered consecutively and signed by the committee chair and each order shall be followed by an explanatory note reciting the reason therefor.

Unless otherwise prescribed in the orders, each shall become effective ninety days after:

(1) Signing of the order; and

(2) Filing a summary thereof with the board of governors of the state bar association; and

(3) The filing thereof with the secretary of state. [2011 c 336 § 2; 1953 c 257 § 5.]

1.08.026 Examination of code—Hearings—Recommendations to legislature. The committee also shall exam-

ine the revised code and from time to time submit to the legislature proposals for enactment of the several titles, chapters and sections thereof, to the end that, as expeditiously as possible, the revised code, and each part thereof, shall constitute conclusive, rather than prima facie evidence of the law. Each such proposal shall be accompanied by explanatory matter. The committee may hold hearings concerning any such proposal or concerning recommendations formulated or to be formulated in accordance with RCW 1.08.025. Proposals or recommendations approved by the committee shall be submitted to the chair of the house or senate judiciary committee at the commencement of the next succeeding session of the legislature. [2011 c 336 § 3; 1959 c 95 § 4; 1953 c 257 § 9.]

1.08.028 Opinions as to validity or constitutionality.

Neither the reviser nor any member of his or her staff shall be required to furnish any written opinion as to the validity or constitutionality of any proposed legislation, which he or she may be requested to draft or prepare, nor shall any member of the committee be required to pass upon the constitutionality of any matter submitted to it for consideration. [2011 c 336 § 4; 1955 c 235 § 4.]

1.08.033 Reviser's office location. The department of public institutions shall provide suitable office and storage space and facilities for the reviser and his or her staff at Olympia, at a location convenient to the legislature and to the state law library. [2011 c 336 § 5; 1955 c 235 § 5; 1951 c 157 § 15.]

Reviser's note: Powers and duties of department of public institutions relating to housing of state agencies were repealed by 1955 c 195 § 3 and the director of general administration was vested with these powers and duties in 1955 c 285 § 9.

1.08.037 Publication of code—Specifications—Certificate of compliance. The committee shall from time to time formulate specifications relative to the format, size and style of type, paper stock, number of volumes, method and quality of binding, contents, indexing, and general scope and character of footnotes, and annotations, if any, for any publication for general use of the revised code and supplements thereto. No such publication or the contents thereof, other than such temporary edition as may expressly be authorized by the legislature, shall be received as evidence of the laws of this state unless it complies with such specifications of the committee as are current at the time of publication, including compliance with the section numbering adopted by the reviser under supervision of the statute law committee. If a publication complies with such specifications, the committee shall furnish a certificate of such compliance, executed on behalf of the committee by its chair, to the publisher, and the certificate shall be reproduced at the beginning of each such volume or supplement.

Upon request of any publisher in good faith interested in publishing said code, the committee shall furnish a copy of its current specifications and shall not during the process of any bona fide publication of said code or supplements modify any such specifications, if such modification would result in added expense or material inconvenience to the publisher, without written concurrence therein by such publisher. [2011 c 336 § 6; 1955 c 235 § 6; 1953 c 257 § 14; 1951 c 157 § 14.]

[2011 RCW Supp—page 2]

1.08.039 Publication, sale, and distribution of code and supplements—Contracts or other arrangements. The committee may enter into contracts or otherwise arrange for the publication and/or distribution, provided for in RCW 1.08.038, with or without calling for bids, by the department of enterprise services, upon specifications formulated under the authority of RCW 1.08.037, and upon such basis as the committee deems to be most expeditious and economical. Any such contract may be upon such terms as the committee deems to be most advantageous to the state and to potential purchasers of such publications. The committee shall fix terms and prices for such publications. [2011 1st sp.s. c 43 § 301; 1955 c 235 § 8; 1953 c 257 § 12.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

1.08.070 Legislators to receive codes and supplements on digital media without charge. Each member of the legislature may receive one set of the Revised Code of Washington on digital media without charge. All persons receiving codes under this section may receive supplements to the code on digital media free of charge, during their term of office as a member or officer of the legislature. [2011 c 156 § 2; 1955 c 235 § 9.]

Purpose—Finding—Intent—2011 c 156: See note following RCW 1.08.080.

1.08.080 Statute law committee publications to be permanently available in digital form on legislative web sites. Current digital copies of the Revised Code of Washington, the Washington Administrative Code, the Washington State Register, and the session laws of the Washington state legislature shall be maintained and made freely available for permanent public access on the code reviser or legislative web site. All historical digital copies added to the web site shall be made freely available for permanent public access.

The statute law committee shall provide digital authentication for any publication in a digital format that is declared official, if in the discretion of the committee such authentication does not interfere with public access. [2011 c 156 § 3.]

Purpose—Finding—Intent—2011 c 156: "The purpose of this act is to promote widespread access to legal and public information materials produced by the statute law committee in both digital and print formats while responding to a changing marketplace where sale of paper copies no longer supports the printing of copies intended for free distribution.

The legislature finds that web-based access to these materials has become the most popular and efficient method of access by the public, state agencies and local governments, and the legal community and that permanent public access to these web-based materials shall be maintained and preserved. The statute law committee shall also make it a priority to provide reasonably priced print alternatives to the public, state agencies and local governments, and libraries.

The legislature intends that the statute law committee have additional discretion to distribute its publications using the most efficient methods and technologies available and to use less expensive formats for the delivery of free copies to state and local agencies when appropriate." [2011 c 156 § 1.]

Chapter 1.12 RCW

RULES OF CONSTRUCTION

Sections

1.12.080 Construction of statutes—Domestic relations—Exceptions.

1.12.080 Construction of statutes—Domestic relations—Exceptions. For the purposes of this code and any legislation hereafter enacted by the legislature or by the people, with the exception of chapter 26.04 RCW, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, unless the legislation expressly states otherwise and to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2011 c 9 § 2; 2009 c 521 § 3.]

**Chapter 1.20 RCW
GENERAL PROVISIONS**

Sections

1.20.010 State flag.

1.20.010 State flag. The official flag of the state of Washington shall be of dark green silk or bunting and shall bear in its center a reproduction of the seal of the state of Washington embroidered, printed, painted or stamped thereon. The edges of the flag may, or may not, be fringed. If a fringe is used the same shall be of gold or yellow color of the same shade as the seal. The dimensions of the flag may vary.

The secretary of state is authorized to provide the state flag to units of the armed forces, without charge therefor, as in his or her discretion he or she deems entitled thereto. The secretary of state is further authorized to sell the state flag to any citizen at a price to be determined by the secretary of state. [2011 c 336 § 7; 1967 ex.s. c 65 § 2; 1925 ex.s. c 85 § 1; 1923 c 174 § 1; RRS § 10964-1, RRS vol. 11, p. 399.]

Reviser’s note: Same RRS number was also used for a section dealing with a different subject on page 110 of RRS vol. 11, pocket part.

**Title 2
COURTS OF RECORD**

Chapters

- 2.04 Supreme court.**
- 2.06 Court of appeals.**
- 2.08 Superior courts.**
- 2.10 Judicial retirement system.**
- 2.12 Retirement of judges—Retirement system.**
- 2.24 Court commissioners and referees.**
- 2.28 Powers of courts and general provisions.**
- 2.32 Court clerks, reporters, and bailiffs.**
- 2.36 Juries.**
- 2.40 Witnesses.**
- 2.44 Attorneys-at-law.**

- 2.48 State bar act.**
- 2.50 Legal aid.**
- 2.56 Administrator for the courts.**

**Chapter 2.04 RCW
SUPREME COURT**

Sections

- 2.04.010 Jurisdiction.
- 2.04.031 Court facilities.
- 2.04.150 Apportionment of business—En banc hearings.

2.04.010 Jurisdiction. The supreme court shall have original jurisdiction in habeas corpus and quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy or the value of the property does not exceed the sum of two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of mandamus, review, prohibition, habeas corpus, certiorari, and all other writs necessary and proper to the complete exercise of its appellate and revisory jurisdiction. Each of the judges shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or herself, or before the supreme court, or before any superior court of the state, or any judge thereof. [2011 c 336 § 8; 1890 p 322 § 6; RRS § 1.]

Rules of court: Cf. *RAP 4.2, 4.3, 18.22; Titles 2 and 16 RAP.*

Jurisdiction of supreme court: State Constitution Art. 4 § 4.

2.04.031 Court facilities. If proper rooms in which to hold the court, and for the accommodation of the officers thereof, are not provided by the state, together with attendants, furniture, fuel, lights, record books and stationery, suitable and sufficient for the transaction of business, the court, or any three justices thereof, may direct the clerk of the supreme court to provide the same; and the expense thereof, certified by any three justices to be correct, shall be paid out of the state treasury out of any funds therein not otherwise appropriated. Such moneys shall be subject to the order of the clerk of the supreme court, and be by him or her disbursed on proper vouchers, and accounted for by him or her in annual settlements with the governor. [2011 c 336 § 9; 1973 c 106 § 1; 1955 c 38 § 1; 1890 p 322 § 4; RRS § 3.]

2.04.150 Apportionment of business—En banc hearings. The chief justice shall from time to time apportion the business to the departments, and may, in his or her discretion, before a decision is pronounced, order any cause pending before the court to be heard and determined by the court en banc. When a cause has been allotted to one of the departments and a decision pronounced therein, the chief justice, together with any two associate judges, may order such cause to be heard and decided by the court en banc. Any four judges may, either before or after decision by a department,

order a cause to be heard en banc. [2011 c 336 § 10; 1909 c 24 § 4, part; RRS § 9.]

Rules of court: *SAR 4*.

Chapter 2.06 RCW COURT OF APPEALS

Sections

2.06.050	Qualifications of judges.
2.06.090	Practice of law, seeking nonjudicial elective office prohibited.

2.06.050 Qualifications of judges. A judge of the court shall be:

(1) Admitted to the practice of law in the courts of this state not less than five years prior to taking office.

(2) A resident for not less than one year at the time of appointment or initial election in the district for which his or her position was created. [2011 c 336 § 11; 1969 ex.s. c 221 § 5.]

2.06.090 Practice of law, seeking nonjudicial elective office prohibited. No judge, while in office, shall engage in the practice of law. No judge shall run for elective office other than a judicial office during the term for which he or she was elected. [2011 c 336 § 12; 1969 ex.s. c 221 § 9.]

Chapter 2.08 RCW SUPERIOR COURTS

Sections

2.08.080	Oath of office.
2.08.115	Judge serving district comprising more than one county— Reimbursement for travel expenses.
2.08.140	Visiting judge at direction of governor.
2.08.150	Visiting judge at request of judge or judges.
2.08.170	Expenses of visiting judge.
2.08.190	Powers of judge in counties of his or her district.
2.08.200	Decisions and rulings in matters heard outside judge's district.
2.08.220	Process, to whom directed.
2.08.240	Limit of time for decision.

2.08.080 Oath of office. Every judge of a superior court shall, before entering upon the duties of his or her office, take and subscribe an oath that he or she will support the Constitution of the United States and the Constitution of the state of Washington, and will faithfully and impartially discharge the duties of judge to the best of his or her ability, which oath shall be filed in the office of the secretary of state. Such oath or affirmation to be in form substantially the same as prescribed for justices of the supreme court. [2011 c 336 § 13; 1971 c 81 § 5; 1890 p 344 § 15; RRS § 11051.]

Oath of judges: State Constitution Art. 4 § 28.

2.08.115 Judge serving district comprising more than one county—Reimbursement for travel expenses. Whenever a judge of the superior court shall serve a district comprising more than one county, such judge shall be reimbursed for travel expenses in connection with business of the court in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for travel from his or her residence to the other county or counties in his or her district and return. [2011 c 336 § 14; 1975-'76 2nd ex.s. c 34 § 1.]

[2011 RCW Supp—page 4]

Additional notes found at www.leg.wa.gov

2.08.140 Visiting judge at direction of governor. Whenever a judge of the superior court of any county in this state, or a majority of such judges in any county in which there is more than one judge of said court, shall request the governor of the state to direct a judge of the superior court of any other county to hold a session of the superior court of any such county as is first herein above mentioned, the governor shall thereupon request and direct a judge of the superior court of some other county, making such selection as the governor shall deem to be most consistent with the state of judicial business in other counties, to hold a session of the superior court in the county the judge shall have requested the governor as aforesaid. Such request and direction by the governor shall be made in writing, and shall specify the county in which he or she directs the superior judge to whom the same is addressed to hold such session of the superior court, and the period during which he or she is to hold such session. Thereupon it shall be the duty of the superior judge so requested, and he or she is hereby empowered to hold a session of the superior court of the county specified by the governor, at the seat of judicial business thereof, during the period specified by the governor, and in such quarters as the county commissioners of said county may provide for the holding of such session. [2011 c 336 § 15; 1893 c 43 § 1; RRS § 27. Prior: 1890 p 343 § 10.]

Duty to hold court in other county or district: RCW 2.56.040.

2.08.150 Visiting judge at request of judge or judges. Whenever a like request shall be addressed by the judge, or by a majority of the judges (if there be more than one) of the superior court of any county to the superior judge of any other county, he or she is hereby empowered, if he or she deem it consistent with the state of judicial business in the county or counties whereof he or she is a superior judge (and in such case it shall be his or her duty to comply with such request), to hold a session of the superior court of the county the judge or judges whereof shall have made such request, at the seat of judicial business of such county, in such quarters as shall be provided for such session by the board of county commissioners, and during such period as shall have been specified in the request, or such shorter period as he or she may deem necessary by the state of judicial business in the county or counties whereof he or she is a superior judge. [2011 c 336 § 16; 1893 c 43 § 2; RRS § 28. Prior: 1890 p 343 § 10.]

2.08.170 Expenses of visiting judge. Any judge of the superior court of any county in this state who shall hold a session of the superior court of any other county, in pursuance of the provisions of RCW 2.08.140 through 2.08.170 shall be entitled to receive from the county in which he or she shall hold such sessions reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended. The county clerk of such county shall, upon the presentation to him or her by such judge of a statement of such expenses, verified by his or her affidavit, issue to such judge a certificate that he or she is entitled to the

amount thereof; and upon presentation of such certificate to the auditor of such county he or she shall draw a warrant on the current expense fund of such county for the amount in favor of such judge. [2011 c 336 § 17; 1981 c 186 § 3; 1893 c 43 § 4; RRS § 30. Prior: 1890 p 329 § 4.]

Holding court in another county or district—Reimbursement for expenses: RCW 2.56.070.

2.08.190 Powers of judge in counties of his or her district. Any judge of the superior court of the state of Washington shall have power, in any county within his or her district: (1) To sign all necessary orders and papers in probate matters pending in any other county in his or her district; (2) to issue restraining orders, and to sign the necessary orders of continuance in actions or proceedings pending in any other county in his or her district; (3) to decide and rule upon all motions, demurrers, issues of fact, or other matters that may have been submitted to him or her in any other county. All such rulings and decisions shall be in writing and shall be filed immediately with the clerk of the proper county: PROVIDED, That nothing herein contained shall authorize the judge to hear any matter outside of the county wherein the cause or proceeding is pending, except by consent of the parties. [2011 c 336 § 18; 1901 c 57 § 1; RRS § 41.]

2.08.200 Decisions and rulings in matters heard outside judge's district. Any judge of the superior court of the state of Washington who shall have heard any cause, either upon motion, demurrer, issue of fact, or other matter in any county out of his or her district, may decide, rule upon, and determine the same in any county in this state, which decision, ruling, and determination shall be in writing and shall be filed immediately with the clerk of the county where such cause is pending. [2011 c 336 § 19; 1901 c 57 § 2; RRS § 42.]

Rules of court: *Statute modified or superseded by CR 7(c).*

2.08.220 Process, to whom directed. Unless otherwise provided by statute, all process issuing out of the court shall be directed to the sheriff of the county in which it is to be served, and be by him or her executed according to law. [2011 c 336 § 20; 1891 c 45 § 5; RRS § 35.]

2.08.240 Limit of time for decision. Every case submitted to a judge of a superior court for his or her decision shall be decided by him or her within ninety days from the submission thereof: PROVIDED, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he or she is to decide shall commence at the time the cause is submitted upon such rehearing, and upon willful failure of any such judge so to do, he or she shall be deemed to have forfeited his or her office. [2011 c 336 § 21; 1890 p 344 § 12; RRS § 39.]

Decisions, when to be made: State Constitution Art. 4 § 20.

Payment of county's portion: RCW 2.08.100.

Chapter 2.10 RCW

JUDICIAL RETIREMENT SYSTEM

Sections

2.10.070 Retirement board—Duties.

2.10.090 Funding.
2.10.110 Service retirement allowance.
2.10.120 Retirement for disability—Procedure.
2.10.130 Retirement for disability allowance.
2.10.140 Survivor's benefits.
2.10.220 Transfer to system—Prior service credit.

2.10.070 Retirement board—Duties. The retirement board shall perform the following duties:

- (1) Keep in convenient form such data as shall be deemed necessary for actuarial evaluation purposes;
- (2) As of July 1st of every even-numbered year have an actuarial evaluation made as to the mortality and service experience of the beneficiaries under this chapter and the various accounts created for the purpose of showing the financial status of the retirement fund;
- (3) Adopt for the retirement system the mortality tables and such other tables as shall be deemed necessary;
- (4) Keep a record of its proceedings, which shall be open to inspection by the public;
- (5) Serve without compensation but shall be reimbursed for expense incident to service as individual members thereof;
- (6) From time to time adopt such rules and regulations not inconsistent with this chapter for the administration of this chapter and for the transaction of the business of the board.

No member of the board shall be liable for the negligence, default, or failure of any employee or of any member of the board to perform the duties of his or her office and no member of the board shall be considered or held to be an insurer of the funds or assets of the retirement system, but shall be liable only for his or her own personal default or individual failure to perform his or her duties as such member and to exercise reasonable diligence in providing for safeguarding of the funds and assets of the system. [2011 c 336 § 22; 1971 ex.s. c 267 § 7.]

2.10.090 Funding. The total liability, as determined by the actuary, of this system shall be funded as follows:

- (1) Every judge shall have deducted from his or her monthly salary an amount equal to seven and one-half percent of said salary.
- (2) The state as employer shall contribute an equal amount on a quarterly basis.
- (3) The state shall in addition guarantee the solvency of said fund and the legislature shall make biennial appropriations from the general fund of amounts sufficient to guarantee the making of retirement payments as herein provided for if the money in the judicial retirement fund shall become insufficient for that purpose, but such biennial appropriation may be conditioned that sums appropriated may not be expended unless the money in the judicial retirement fund shall become insufficient to meet the retirement payments. [2011 c 336 § 23; 1971 ex.s. c 267 § 9.]

Members' retirement contributions—Pick up by employer: RCW 41.04.445.

2.10.110 Service retirement allowance. A member upon retirement for service shall receive a monthly retirement allowance computed according to his or her completed years of service, as follows: Ten years, but less than fifteen years, three percent of his or her final average salary for each

year of service; fifteen years and over, three and one-half percent of his or her final average salary for each year of service: PROVIDED, That in no case shall any retired member receive more than seventy-five percent of his or her final salary except as increased as a result of the cost of living increases as provided by this chapter. [2011 c 336 § 24; 1971 ex.s. c 267 § 11.]

2.10.120 Retirement for disability—Procedure. (1) Any judge who has served as a judge for a period of ten or more years, and who shall believe he or she has become physically or otherwise permanently incapacitated for the full and efficient performance of the duties of his or her office, may file with the retirement board an application in writing, asking for retirement. Upon receipt of such application the retirement board shall appoint one or more physicians of skill and repute, duly licensed to practice their professions in the state of Washington, who shall, within fifteen days thereafter, for such compensation as may be fixed by the board, to be paid out of the fund herein created, examine said judge and report in writing to the board their findings in the matter. If the physicians appointed by the board find the judge to be so disabled and the retirement board concurs in this finding the judge shall be retired.

(2) The retirement for disability of a judge, who has served as a judge for a period of ten or more years, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (House Joint Resolution No. 37, approved by the voters November 4, 1980), with the concurrence of the retirement board, shall be considered a retirement under subsection (1) of this section. [2011 c 336 § 25; 1982 c 18 § 1; 1971 ex.s. c 267 § 12.]

Reviser's note: House Joint Resolution No. 37, approved by the voters November 4, 1980, became Amendment 71 to the state Constitution.

2.10.130 Retirement for disability allowance. Upon a judge being retired for disability as provided in RCW 2.10.120, he or she shall receive from the fund an amount equal to one-half of his or her final average salary. [2011 c 336 § 26; 1971 ex.s. c 267 § 13.]

2.10.140 Survivor's benefits. (1) A surviving spouse of any judge holding such office, or if he or she dies after having retired and who, at the time of his or her death, has served ten or more years in the aggregate, shall receive a monthly allowance equal to fifty percent of the retirement allowance the retired judge was receiving, or fifty percent of the retirement allowance the active judge would have received had he or she been retired on the date of his or her death, but in no event less than twenty-five percent of the final average salary that the deceased judge was receiving: PROVIDED, That said surviving spouse had been married to the judge for a minimum of two years at time of death.

(2) A judge holding office on July 1, 1988, may make an irrevocable choice to relinquish the survivor benefits provided by this section in exchange for the survivor benefits provided by RCW 2.10.144 and 2.10.146 by indicating the choice in a written declaration submitted to the department of retirement systems by December 31, 1988.

(3) The surviving spouse of any judge who died in office after January 1, 1986, but before July 1, 1988, may elect to receive the survivor benefit provided in RCW 2.10.144(1). [2011 c 336 § 27; 1988 c 109 § 7; 1984 c 37 § 2; 1971 ex.s. c 267 § 14.]

Additional notes found at www.leg.wa.gov

2.10.220 Transfer to system—Prior service credit. (1) Any member of the Washington public employees' retirement system who is eligible to participate in the judicial retirement system may, by written request filed with the retirement boards of the two systems respectively, transfer such membership to the judicial retirement system. Upon the receipt of such request, the board of the Washington public employees' retirement system shall transfer to the board of the Washington judicial retirement system (a) all employee's contributions and interest thereon belonging to such member in the employees' savings fund and all employer's contributions credited or attributed to such member in the benefit account fund and (b) a record of service credited to such member. One-half of such service shall be computed and not more than nine years shall be credited to such member as though such service was performed as a member of the judicial retirement system. Upon such transfer being made the state treasurer shall deposit such moneys in the judicial retirement fund. In the event that any such member should terminate judicial service prior to his or her entitlement to retirement benefits under any of the provisions of this chapter, he or she shall upon request therefor be repaid from the judicial retirement fund an amount equal to the amount of his or her employee's contributions to the Washington public employees' retirement system and interest plus interest thereon from the date of the transfer of such moneys.

(2) Any member of the judicial retirement system who was formerly a member of the Washington public employees' retirement system with membership service credit of not less than six years but who has terminated his or her membership therein under the provisions of chapter 41.40 RCW, may reinstate his or her membership in the Washington public employees' retirement system, for the sole purpose of qualifying for a transfer of membership in the judicial retirement system in accordance with subsection (1) of this section by making full restoration of all withdrawn funds to the employees' savings fund prior to July 1, 1980. Upon reinstatement in accordance with this subsection, the provisions of subsection (1) of this section and the provisions of RCW 41.40.023(3) shall then be applicable to the reinstated member in the same manner and to the same extent as they are to the present members of the Washington public employees' retirement system who are eligible to participate in the judicial retirement system.

(3) Any member of the judicial retirement system who has served as a judge for one or more years and who has rendered service for the state of Washington, or any political subdivision thereof, prior to October 1, 1947, or the time of the admission of the employer into the Washington public employees' retirement system, may—upon his or her payment into the judicial retirement fund of a sum equal to five percent of his or her compensation earned for such prior public service—request and shall be entitled to have one-half of

such service computed and not more than six years immediately credited to such member as though such service had been performed as a member of the judicial retirement system, provided that any such prior service so credited shall not be claimed for any pension system other than a judicial retirement system. [2011 c 336 § 28; 1980 c 7 § 1; 1971 ex.s. c 267 § 22.]

Transfers to system by those covered under chapter 2.12 RCW: RCW 2.10.040.

Chapter 2.12 RCW
RETIREMENT OF JUDGES—
RETIREMENT SYSTEM

Sections

2.12.010	Retirement for service or age.
2.12.012	Partial pension for less than eighteen years service—When authorized, amount.
2.12.015	Additional pension for more than eighteen years service—Amount.
2.12.020	Retirement for disability.
2.12.035	Retirement pay of certain justices or judges retiring prior to December 1, 1968—Widow's benefits.
2.12.040	Service after retirement.
2.12.060	Fund—Constitution—Salary deductions—Aid.
2.12.100	Transfer of membership from Washington public employees' retirement system to judges' retirement system—Authorized—Procedure.

2.12.010 Retirement for service or age. Any judge of the supreme court, court of appeals, or superior court of the state of Washington who heretofore and/or hereafter shall have served as a judge of any such courts for eighteen years in the aggregate or who shall have served ten years in the aggregate and shall have attained the age of seventy years or more may, during or at the expiration of his or her term of office, in accordance with the provisions of this chapter, be retired and receive the retirement pay herein provided for. In computing such term of service, there shall be counted the time spent by such judge in active service in the armed forces of the United States of America, under leave of absence from his or her judicial duties as provided for under chapter 201, Laws of 1941: PROVIDED, HOWEVER, That in computing such credit for such service in the armed forces of the United States of America no allowance shall be made for service beyond the date of the expiration of the term for which such judge was elected. Any judge desiring to retire under the provisions of this section shall file with the director of retirement systems, a notice in duplicate in writing, verified by his or her affidavit, fixing a date when he or she desires his or her retirement to commence, one copy of which the director shall forthwith file with the administrator for the courts. The notice shall state his or her name, the court or courts of which he or she has served as judge, the period of service thereon and the dates of such service. [2011 c 336 § 29; 1982 1st ex.s. c 52 § 2; 1973 c 106 § 4; 1971 c 30 § 1; 1943 c 221 § 1; 1937 c 229 § 1; Rem. Supp. 1943 § 11054-1.]

Additional notes found at www.leg.wa.gov

2.12.012 Partial pension for less than eighteen years service—When authorized, amount. Any judge of the supreme court, court of appeals, or superior court of this state who shall leave judicial service at any time after having served as a judge of any of such courts for an aggregate of

twelve years shall be eligible to a partial retirement pension in a percentage of the pension provided in this chapter as determined by the proportion his or her years of judicial service bears to eighteen and shall receive the same upon attainment of age seventy, or eighteen years after the commencement of such judicial service, whichever shall occur first. [2011 c 336 § 30; 1971 c 30 § 2; 1961 c 286 § 1.]

Additional notes found at www.leg.wa.gov

2.12.015 Additional pension for more than eighteen years service—Amount. In the event any judge of the supreme court, court of appeals, or superior court of the state serves more than eighteen years in the aggregate as computed under RCW 2.12.010, he or she shall receive in addition to any other pension benefits to which he or she may be entitled under this chapter, an additional pension benefit based upon one-eighteenth of his or her salary for each year of full service after eighteen years, provided his or her total pension shall not exceed seventy-five percent of the monthly salary he or she was receiving as a judge at the time of his or her retirement. [2011 c 336 § 31; 1971 c 30 § 3; 1961 c 286 § 2.]

Additional notes found at www.leg.wa.gov

2.12.020 Retirement for disability. (1) Any judge of the supreme court, court of appeals, or superior court of the state of Washington, who heretofore and/or hereafter shall have served as a judge of any such courts for a period of ten years in the aggregate, and who shall believe he or she has become physically or otherwise permanently incapacitated for the full and efficient performance of the duties of his or her office, may file with the director of retirement systems an application in duplicate in writing, asking for retirement, which application shall be signed and verified by the affidavit of the applicant or by someone in his or her behalf and which shall set forth his or her name, the office then held, the court or courts of which he or she has served as judge, the period of service thereon, the dates of such service and the reasons why he or she believes himself or herself to be, or why they believe him or her to be incapacitated. Upon filing of such application the director shall forthwith transmit a copy thereof to the governor who shall appoint three physicians of skill and repute, duly licensed to practice their professions in the state of Washington, who shall, within fifteen days thereafter, for such compensation as may be fixed by the governor, to be paid out of the fund hereinafter created, examine said judge and report, in writing, to the governor their findings in the matter. If a majority of such physicians shall report that in their opinion said judge has become permanently incapacitated for the full and efficient performance of the duties of his or her office, and if the governor shall approve such report, he or she shall file the report, with his or her approval endorsed thereon, in the office of the director and a duplicate copy thereof with the administrator for the courts, and from the date of such filing the applicant shall be deemed to have retired from office and be entitled to the benefits of this chapter to the same extent as if he or she had retired under the provisions of RCW 2.12.010.

(2) The retirement for disability of a judge, who has served as a judge of the supreme court, court of appeals, or superior court of the state of Washington for a period of ten

years in the aggregate, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (House Joint Resolution No. 37, approved by the voters November 4, 1980), with the concurrence of the retirement board, shall be considered a retirement under subsection (1) of this section. [2011 c 336 § 32; 1982 1st ex.s. c 52 § 3; 1982 c 18 § 2; 1973 c 106 § 5; 1971 c 30 § 4; 1937 c 229 § 2; RRS § 11054-2.]

Reviser's note: House Joint Resolution No. 37, approved by the voters November 4, 1980, became Amendment 71 to the state Constitution.

Additional notes found at www.leg.wa.gov

2.12.035 Retirement pay of certain justices or judges retiring prior to December 1, 1968—Widow's benefits.

The retirement pay or pension of any justice of the supreme or judge of any superior court of the state who was in office on August 6, 1965, and who retired prior to December 1, 1968, or who would have been eligible to retire at the time of death prior to December 1, 1968, shall be based, effective December 1, 1968, upon the annual salary which was being prescribed by the statute in effect for the office of justice of the supreme court or for the office of judge of the superior court, respectively, at the time of his or her retirement or at the end of the term immediately prior to his or her retirement if his or her retirement was made after expiration of his or her term or at the time of his or her death if he or she died prior to retirement. The widow's benefit for the widow of any such justice or judge as provided for in RCW 2.12.030 shall be based, effective December 1, 1968, upon such retirement pay. [2011 c 336 § 33; 1971 c 81 § 7; 1969 ex.s. c 202 § 1.]

2.12.040 Service after retirement. If any retired judge shall accept an appointment or an election to a judicial office, he or she shall be entitled to receive the full salary pertaining thereto, and his or her retirement pay under this chapter shall be suspended during such term of office and his or her salary then received shall be subject to contribution to the judges' retirement fund as provided in this chapter. [2011 c 336 § 35; 1955 c 38 § 6; 1943 c 37 § 1; 1937 c 229 § 4; Rem. Supp. 1943 § 11054-4.]

2.12.060 Fund—Constitution—Salary deductions—Aid. For the purpose of providing moneys in said judges' retirement fund, concurrent monthly deductions from judges' salaries and portions thereof payable from the state treasury and withdrawals from the general fund of the state treasury shall be made as follows: Six and one-half percent shall be deducted from the monthly salary of each justice of the supreme court, six and one-half percent shall be deducted from the monthly salary of each judge of the court of appeals, and six and one-half percent of the total salaries of each judge of the superior court shall be deducted from that portion of the salary of such justices or judges payable from the state treasury; and a sum equal to six and one-half percent of the combined salaries of the justices of the supreme court, the judges of the court of appeals, and the judges of the superior court shall be withdrawn from the general fund of the state treasury. In consideration of the contributions made by the judges and justices to the judges' retirement fund, the state hereby undertakes to guarantee the solvency of said fund and

the legislature shall make biennial appropriations from the general fund of amounts sufficient to guarantee the making of retirement payments as herein provided for if the money in the judges' retirement fund shall become insufficient for that purpose, but such biennial appropriation may be conditioned that sums appropriated may not be expended unless the money in the judges' retirement fund shall become insufficient to meet the retirement payments. The deductions and withdrawals herein directed shall be made on or before the tenth day of each month and shall be based on the salaries of the next preceding calendar month. The administrator for the courts shall issue warrants payable to the treasurer to accomplish the deductions and withdrawals herein directed, and shall issue the monthly salary warrants of the judges and justices for the amount of salary payable from the state treasury after such deductions have been made. The treasurer shall cash the warrants made payable to him or her hereunder and place the proceeds thereof in the judges' retirement fund for disbursement as authorized in this chapter. [2011 c 336 § 36; 1973 c 106 § 6; 1973 c 37 § 1. Prior: 1971 c 81 § 8; 1971 c 30 § 6; 1957 c 243 § 2; 1951 c 79 § 2; 1945 c 19 § 2; 1937 c 229 § 6; Rem. Supp. 1945 § 11054-6.]

Members' retirement contributions—Pick up by employer: RCW 41.04.445.

Additional notes found at www.leg.wa.gov

2.12.100 Transfer of membership from Washington public employees' retirement system to judges' retirement system—Authorized—Procedure.

Any member of the Washington public employees' retirement system who is eligible to participate in the judges' retirement system, may by written request filed with the director and custodian of the two systems respectively, transfer such membership to the judges' retirement system. Upon the receipt of such request, the director of the Washington public employees' retirement system shall transfer to the state treasurer (1) all employees' contributions and interest thereon belonging to such member in the employees' savings fund and all employers' contributions credited or attributed to such member in the benefit account fund and (2) a record of service credited to such member. One-half of such service but not in excess of twelve years shall be computed and credited to such member as though such service was performed as a member of the judges' retirement system. Upon such transfer being made the state treasurer shall deposit such moneys in the judges' retirement fund. In the event that any such member should terminate judicial service prior to his or her entitlement to retirement benefits under any of the provisions of chapter 2.12 RCW, he or she shall upon request therefor be repaid from the judges' retirement fund an amount equal to the amount of his or her employees' contributions to the Washington public employees' retirement system and interest plus interest thereon from the date of the transfer of such moneys: PROVIDED, HOWEVER, That this section shall not apply to any person who is retired as a judge as of February 20, 1970. [2011 c 336 § 37; 1970 ex.s. c 96 § 2.]

Chapter 2.24 RCW

COURT COMMISSIONERS AND REFEREES

Sections

2.24.020 Oath.

2.24.020 Oath. Court commissioners appointed hereunder shall, before entering upon the duties of such office, take and subscribe an oath to support the Constitution of the United States, the Constitution of the state of Washington, and to perform the duties of such office fairly and impartially and to the best of his or her ability. [2011 c 336 § 38; 1909 c 124 § 5; RRS § 88.]

Chapter 2.28 RCW

POWERS OF COURTS AND GENERAL PROVISIONS

Sections

2.28.030 Judicial officer defined—When disqualified.
 2.28.060 Judicial officers—Powers.
 2.28.090 Powers of inferior judicial officers.
 2.28.100 Legal holidays—No court—Exceptions.
 2.28.120 Proceedings may be adjourned from time to time.
 2.28.160 Judge pro tempore—Compensation—Reimbursement for subsistence, lodging and travel expenses—Affidavit to court.
 2.28.175 DUI courts.
 2.28.180 Mental health courts.
 2.28.190 DUI court, drug court, and mental health court may be combined.

2.28.030 Judicial officer defined—When disqualified. A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he or she is a member in any of the following cases:

- (1) In an action, suit, or proceeding to which he or she is a party, or in which he or she is directly interested.
- (2) When he or she was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.
- (3) When he or she is related to either party by consanguinity or affinity within the third degree. The degree shall be ascertained and computed by ascending from the judge to the common ancestor and descending to the party, counting a degree for each person in both lines, including the judge and party and excluding the common ancestor.
- (4) When he or she has been attorney in the action, suit, or proceeding in question for either party; but this section does not apply to an application to change the place of trial, or the regulation of the order of business in court.

In the cases specified in subsections (3) and (4) of this section, the disqualification may be waived by the parties, and except in the supreme court and the court of appeals shall be deemed to be waived unless an application for a change of the place of trial be made as provided by law. [2011 c 336 § 39; 1971 c 81 § 11; 1895 c 39 § 1; 1891 c 54 § 3; RRS § 54.]

2.28.060 Judicial officers—Powers. Every judicial officer has power:

- (1) To preserve and enforce order in his or her immediate presence and in the proceedings before him or her, when he or she is engaged in the performance of a duty imposed upon him or her by law;

- (2) To compel obedience to his or her lawful orders as provided by law;

- (3) To compel the attendance of persons to testify in a proceeding pending before him or her, in the cases and manner provided by law;

- (4) To administer oaths to persons in a proceeding pending before him or her, and in all other cases where it may be necessary in the exercise of his or her powers and the performance of his or her duties. [2011 c 336 § 40; 1955 c 38 § 13; 1891 c 54 § 6; RRS § 57.]

Compelling attendance of witnesses: Chapter 5.56 RCW.

Oaths, who may administer: RCW 5.28.010.

2.28.090 Powers of inferior judicial officers. Every other judicial officer may, within the county, city, district, or precinct in which he or she is chosen:

- (1) Exercise the powers mentioned in RCW 2.28.080 (1) through (3);

- (2) Exercise any other power and perform any other duty conferred or imposed upon him or her by other statute. [2011 c 336 § 41; 1891 c 54 § 9; RRS § 60.]

2.28.100 Legal holidays—No court—Exceptions. No court shall be open, nor shall any judicial business be transacted, on a legal holiday, except:

- (1) To give, upon their request, instructions to a jury when deliberating on their verdict;
- (2) To receive the verdict of a jury;
- (3) For the exercise of the powers of a magistrate in a criminal action, or in a proceeding of a criminal nature;
- (4) For hearing applications for and issuing writs of habeas corpus, injunction, prohibition, and attachment;
- (5) For the issuance of any process or subpoena not requiring immediate judicial or court action, and the service thereof.

The governor, in declaring any legal holiday, in his or her discretion, may provide in his or her proclamation that such holiday shall not be applicable to the courts of or within the state. [2011 c 336 § 42; 1986 c 219 § 1; 1933 c 54 § 1; 1927 c 51 § 2; RRS § 64. Prior: 1891 c 41 § 2; Code 1881 § 1267.]

Courts to be open except on nonjudicial days: State Constitution Art. 4 § 6 (Amendment 28).

Legal holidays: RCW 1.16.050.

2.28.120 Proceedings may be adjourned from time to time. A court or judicial officer has power to adjourn any proceeding before it or him or her from time to time, as may be necessary, unless otherwise expressly provided by law. [2011 c 336 § 43; 1891 c 54 § 10; RRS § 66.]

2.28.160 Judge pro tempore—Compensation—Reimbursement for subsistence, lodging and travel expenses—Affidavit to court. Whenever a judge serves as a judge pro tempore the payments for subsistence, lodging, and compensation pursuant to RCW 2.04.250 and 2.06.160 as now or hereafter amended shall be paid only for time actually spent away from the usual residence and abode of such pro tempore judge and only for time actually devoted to sitting on cases heard by such pro tempore judge and for time

actually spent in research and preparation of a written opinion prepared and delivered by such pro tempore judge; which time spent shall be evidenced by an affidavit of such judge to be submitted by him or her to the court from which he or she is entitled to receive subsistence, lodging, and compensation for his or her services pursuant to RCW 2.04.250 and 2.06.160 as now or hereafter amended. [2011 c 336 § 44; 1975-'76 2nd ex.s. c 34 § 2.]

Additional notes found at www.leg.wa.gov

2.28.175 DUI courts. (1) Counties may establish and operate DUI courts.

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

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

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

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for DUI court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for DUI court operations and associated services. However, until June 30, 2014, no match is required for state moneys expended for the administrative and overhead costs associated with the operation of a DUI court established as of January 1, 2011.

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

(i) The offender would benefit from alcohol treatment;

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

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

(A) That is a sex offense;

(B) That is a serious violent offense;

(C) That is vehicular homicide or vehicular assault;

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

(E) During which the defendant caused substantial or great bodily harm or death to another person. [2011 c 293 § 10.]

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

(2) For the purposes of this section, "mental health court" means a court that has special calendars or dockets designed

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

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

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

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

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

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

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

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

(A) That is a sex offense;

(B) That is a serious violent offense;

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

(D) During which the defendant caused substantial or great bodily harm or death to another person. [2011 c 236 § 1; 2005 c 504 § 501.]

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

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

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

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

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

Chapter 2.32 RCW

COURT CLERKS, REPORTERS, AND BAILIFFS

Sections

2.32.050	Powers and duties of court clerks.
2.32.090	Clerk not to practice law.
2.32.110	Reporter's duties.
2.32.130	Correction by judges.
2.32.140	Opinions available to reporter.
2.32.160	Washington court reports commission.
2.32.200	Duties of official reporter.
2.32.210	Salaries—Expenses.
2.32.220	Application to lesser judicial districts.
2.32.240	Transcript of testimony—Fee—Forma pauperis.
2.32.260	Notes of outgoing reporter may be transcribed—Effect.

2.32.050 Powers and duties of court clerks. The clerk of the supreme court, each clerk of the court of appeals, and each clerk of a superior court, has power to take and certify the proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged, and to administer oaths in every case when authorized by law; and it is the duty of the clerk of the supreme court, each clerk of the court of appeals, and of each county clerk for each of the courts for which he or she is clerk:

- (1) To keep the seal of the court and affix it in all cases where he or she is required by law;
- (2) To record the proceedings of the court;
- (3) To keep the records, files, and other books and papers appertaining to the court;
- (4) To file all papers delivered to him or her for that purpose in any action or proceeding in the court as directed by court rule or statute;
- (5) To attend the court of which he or she is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court;
- (6) To keep the journal of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments, and decrees;
- (7) To authenticate by certificate or transcript, as may be required, the records, files, or proceedings of the court, or any other paper appertaining thereto and filed with him or her;
- (8) To exercise the powers and perform the duties conferred and imposed upon him or her elsewhere by statute;
- (9) In the performance of his or her duties to conform to the direction of the court;
- (10) To publish notice of the procedures for inspection of the public records of the court. [2011 c 336 § 45; 1981 c 277 § 1; 1971 c 81 § 12; 1891 c 57 § 3; RRS § 77. Prior: Code 1881 §§ 2180, 2182, 2184.]

Rules of court: SAR 16.

2.32.090 Clerk not to practice law. Each clerk of a court is prohibited during his or her continuance in office from acting, or having a partner who acts, as an attorney of the court of which he or she is clerk. [2011 c 336 § 46; 1891 c 57 § 5; RRS § 81. Prior: Code 1881 § 2183; 1854 p 367 § 10.]

Rules of court: SAR 16(3).

2.32.110 Reporter's duties. He or she shall prepare such decisions for publication by giving the title of each case, a syllabus of the points decided, a brief statement of the facts bearing on the points decided, the names of the counsel, and a reference to such authorities as are cited from standard reports and textbooks that have a special bearing on the case, and he or she shall prepare a full and comprehensive index to each volume, and prefix a table of cases reported. [2011 c 336 § 47; 1890 p 320 § 2; RRS § 11059.]

Rules of court: SAR 17.

2.32.130 Correction by judges. Within thirty days after such proof sheets are furnished, the judges must return the same to the reporter, with corrections or alterations, and he or she must make the corrections or alterations accordingly. [2011 c 336 § 48; 1890 p 320 § 4; RRS § 11061.]

Rules of court: SAR 17.

2.32.140 Opinions available to reporter. The reporter may take the original opinions and papers in each case from the clerk's office and retain them in his or her possession not exceeding sixty days. [2011 c 336 § 49; 1890 p 320 § 5; RRS § 11062.]

2.32.160 Washington court reports commission. There is hereby created a commission advisory to the supreme court regarding the publication of the decisions of the supreme court and court of appeals of this state in both the form of advance sheets for temporary use and in permanent form, to be known as the Washington court reports commission, and to include the reporter of decisions, the state law librarian, and such other members, including a judge of the court of appeals and a member in good standing of the Washington state bar association, as determined by the chief justice of the supreme court, who shall be chair of the commission. Members of the commission shall serve as such without additional or any compensation: PROVIDED, That members shall be compensated in accordance with RCW 43.03.240. [2011 c 336 § 50; 2005 c 190 § 1; 1995 c 257 § 1; 1984 c 287 § 7; 1971 c 42 § 1; 1943 c 185 § 1; Rem. Supp. 1943 § 11071-1. Prior: 1917 c 87 § 1; 1905 c 167 §§ 1-4; 1895 c 55 § 1; 1891 c 37 § 1; 1890 p 327 § 1.]

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

2.32.200 Duties of official reporter. It shall be the duty of each official reporter appointed under RCW 2.32.180 through 2.32.310 to attend every term of the superior court in the county or judicial district for which he or she is appointed, at such times as the judge presiding may direct; and upon the trial of any cause in any court, if either party to the suit or action, or his or her attorney, request the services of the official reporter, the presiding judge shall grant such request, or upon his or her own motion such presiding judge may order a full report of the testimony, exceptions taken, and all other oral proceedings; in which case the official reporter shall cause accurate shorthand notes of the oral testimony, exceptions taken, and other oral proceedings had, to be taken, except when the judge and attorneys dispense with his or her services with respect to any portion of the proceedings

therein, which notes shall be filed in the office of the clerk of the superior court where such trial is had. [2011 c 336 § 51; 1983 c 3 § 1; 1913 c 126 § 2; RRS § 42-2.]

2.32.210 Salaries—Expenses. Each official reporter shall be paid such compensation as shall be fixed, after recommendation by the judges of the judicial district involved, by the legislative authority of the county comprising said judicial district, or by the legislative authorities acting jointly where the judicial district is comprised of more than one county: PROVIDED, That in judicial districts having a total population of forty thousand or more, the salary of an official court reporter shall not be less than sixteen thousand five hundred dollars per annum: PROVIDED FURTHER, That in judicial districts having a total population of twenty-five thousand and under forty thousand, such salary shall not be less than eleven thousand one hundred dollars per annum.

Said compensation shall be paid out of the current expense fund of the county or counties where court is held.

In judicial districts comprising more than one county the council or commissioners thereof shall, on the first day of January of each year, or as soon thereafter as may be convenient, apportion the amount of the salary to be paid to the reporter by each county according and in proportion to the number of criminal and civil actions entered and commenced in superior court of the constituent counties in the preceding year. In addition to the salary above provided, in judicial districts comprising more than one county, the reporter shall receive his or her actual and necessary expenses of transportation and living expenses when he or she goes on official business to a county of his or her judicial district other than the county in which he or she resides, from the time he or she leaves his or her place of residence until he or she returns thereto, said expense to be paid by the county to which he or she travels. If one trip includes two or more counties, the expense may be apportioned between the counties visited in proportion to the amount of time spent in each county on the trip. If an official reporter uses his or her own automobile for the purpose of such transportation, he or she shall be paid therefor at the same rate per mile as county officials are paid for use of their private automobiles. The sworn statement of the official reporter, when certified to as correct by the judge presiding, shall be a sufficient voucher upon which the county auditor shall draw his or her warrant upon the treasurer of the county in favor of the official reporter.

The salaries of official court reporters shall be paid upon sworn statements, when certified as correct by the judge presiding, as state and county officers are paid. [2011 c 336 § 52; 1975 1st ex.s. c 128 § 1; 1972 ex.s. c 18 § 1; 1969 c 95 § 1; 1967 c 20 § 1; 1965 ex.s. c 114 § 1; 1961 c 121 § 1; 1957 c 244 § 2; 1953 c 265 § 1; 1951 c 210 § 1. Prior: 1945 c 24 § 1; 1943 c 69 § 2; 1913 c 126 § 3; Rem. Supp. 1945 § 42-3.]

2.32.220 Application to lesser judicial districts. If the judge of the superior court in any judicial district having a total population of less than twenty-five thousand finds that the work in such district requires the services of an official court reporter he or she may appoint a person qualified under RCW 2.32.180. [2011 c 336 § 53; 1957 c 244 § 3; 1951 c 210 § 2; 1945 c 24 § 2; Rem. Supp. 1945 § 42-3a.]

2.32.240 Transcript of testimony—Fee—Forma pauperis. When a record has been taken in any cause as provided in RCW 2.32.180 through 2.32.310, if the court, or either party to the suit or action, or his or her attorney, request a transcript, the official reporter and clerk of the court shall make, or cause to be made, with reasonable diligence, full and accurate transcript of the testimony and other proceedings, which shall, when certified to as hereinafter provided, be filed with the clerk of the court where such trial is had for the use of the court or parties to the action. The fees of the reporter and clerk of the court for making such transcript shall be fixed in accordance with costs as allowed in cost bills in civil cases by the supreme court of the state of Washington, and when such transcript is ordered by any party to any suit or action, said fee shall be paid forthwith by the party ordering the same, and in all cases where a transcript is made as provided for under the provisions of RCW 2.32.180 through 2.32.310 the cost thereof shall be taxable as costs in the case, and shall be so taxed as other costs in the case are taxed: PROVIDED, That when, from and after December 20, 1973, a party has been judicially determined to have a constitutional right to a transcript and to be unable by reason of poverty to pay for such transcript, the court may order said transcript to be made by the official reporter, which transcript fee therefor shall be paid by the state upon submission of appropriate vouchers to the clerk of the supreme court. [2011 c 336 § 54; 1983 c 3 § 2; 1975 1st ex.s. c 261 § 1; 1972 ex.s. c 111 § 1; 1970 ex.s. c 31 § 1; 1965 c 133 § 3; 1957 c 244 § 4; 1943 c 69 § 4; 1913 c 126 § 5; Rem. Supp. 1943 § 42-5.]

Indigent party—State to pay costs and fees incident to review by supreme court or court of appeals: RCW 4.88.330.

Additional notes found at www.leg.wa.gov

2.32.260 Notes of outgoing reporter may be transcribed—Effect. When the official reporter who has taken notes in any cause, shall thereafter cease to be such official reporter, any transcript thereafter made by him or her therefrom, or made by any competent person under the direction of the court, and duly certified to by the person making the same, under oath, as a full, true and correct transcript of said notes, the same shall have full force and effect the same as though certified by an official reporter of said court. [2011 c 336 § 55; 1913 c 126 § 7; RRS § 42-7.]

Chapter 2.36 RCW

JURIES

Sections

2.36.054 Jury source list—Master jury list—Creation.

2.36.054 Jury source list—Master jury list—Creation. Unless otherwise specified by rule of the supreme court, the jury source list and master jury list for each county shall be created as provided by this section.

(1) The superior court of each county, after consultation with the county clerk and county auditor of that jurisdiction, shall annually notify the consolidated technology services agency not later than March 1 of each year of its election to use either a jury source list that is merged by the county or a jury source list that is merged by the consolidated technology

services agency. The consolidated technology services agency shall annually furnish at no charge to the superior court of each county a separate list of the registered voters residing in that county as supplied annually by the secretary of state and a separate list of driver's license and identicard holders residing in that county as supplied annually by the department of licensing, or a merged list of all such persons residing in that county, in accordance with the annual notification required by this subsection. The lists provided by the consolidated technology services agency shall be in an electronic format mutually agreed upon by the superior court requesting it and the department of information services. The annual merger of the list of registered voters residing in each county with the list of licensed drivers and identicard holders residing in each county to form a jury source list for each county shall be in accordance with the standards and methodology established in this chapter or by superseding court rule whether the merger is accomplished by the consolidated technology services agency or by a county.

(2) Persons on the lists of registered voters and driver's license and identicard holders shall be identified by a minimum of last name, first name, middle initial where available, date of birth, gender, and county of residence. Identifying information shall be used when merging the lists to ensure to the extent reasonably possible that persons are only listed once on the merged list. Conflicts in addresses are to be resolved by using the most recent record by date of last vote in a general election, date of driver's license or identicard address change or date of voter registration.

(3) The consolidated technology services agency shall provide counties that elect to receive a jury source list merged by the consolidated technology services agency with a list of names which are possible duplicates that cannot be resolved based on the identifying information required under subsection (2) of this section. If a possible duplication cannot subsequently be resolved satisfactorily through reasonable efforts by the county receiving the merged list, the possible duplicate name shall be stricken from the jury source list until the next annual jury source list is prepared. [2011 1st sp.s. c 43 § 812; 1993 c 408 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

Chapter 2.40 RCW WITNESSES

Sections

2.40.030 Travel expense in lieu of mileage in certain cases.

2.40.030 Travel expense in lieu of mileage in certain cases. Whenever a juror, witness, or officer is required to attend a court, or travel on official business out of the limits of his or her own county, and entitled to mileage, in lieu thereof he or she may at his or her option receive his or her actual and necessary traveling expenses by the usually traveled route in going to and returning from the place where the court is held, or where the business is discharged. At the close of each term of the district court, the clerk shall ascertain the amount due each juror for his or her mileage and per

diem; and he or she shall also certify the amount of fees that may be due to the sheriff of any other county than that in which the court is held, who may have attended the term, having a prisoner in custody charged with or convicted of a crime, or for the purpose of conveying such prisoner to or from the county, which, when approved by the court or judge, shall be a charge upon the county to which the prisoner belongs; and he or she shall also certify the amount which may be due witnesses attending from another county in a criminal case for their fees, which, when approved by the court or judge, shall be a charge upon the county to which the case belongs. [2011 c 336 § 56; Code 1881 § 2109; 1869 p 419 § 7; 1863 p 424 §§ 6, 8; RRS §§ 509, 4230.]

County officers—Expenses: RCW 42.24.090.

Juror expense payments: RCW 2.36.150.

Salaried officers not to receive witness fees: RCW 42.16.020.

State officers—Subsistence and mileage: RCW 43.03.050, 43.03.060.

Witness fees as costs in civil actions: RCW 4.84.090.

Chapter 2.44 RCW ATTORNEYS-AT-LAW

Sections

2.44.010 Authority of attorney.
2.44.020 Appearance without authority—Procedure.
2.44.030 Production of authority to act.
2.44.040 Change of attorneys.
2.44.050 Notice of change and substitution.
2.44.060 Death or removal of attorney—Proceedings.

2.44.010 Authority of attorney. An attorney and counselor has authority:

(1) To bind his or her client in any of the proceedings in an action or special proceeding by his or her agreement duly made, or entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings in, an action or special proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him or her, or signed by the party against whom the same is alleged, or his or her attorney;

(2) To receive money claimed by his or her client in an action or special proceeding, during the pendency thereof, or after judgment upon the payment thereof, and not otherwise, to discharge the same or acknowledge satisfaction of the judgment;

(3) This section shall not prevent a party from employing a new attorney or from issuing an execution upon a judgment, or from taking other proceedings prescribed by statute for its enforcement. [2011 c 336 § 57; Code 1881 § 3280; 1863 p 404 § 6; RRS § 130.]

2.44.020 Appearance without authority—Procedure. If it be alleged by a party for whom an attorney appears, that he or she does so without authority, the court may, at any stage of the proceedings, relieve the party for whom the attorney has assumed to appear from the consequences of his or her act; it may also summarily, upon motion, compel the attorney to repair the injury to either party consequent upon his or her assumption of authority. [2011 c 336 § 58; Code 1881 § 3281; 1863 p 405 § 7; RRS § 131.]

2.44.030 Production of authority to act. The court, or a judge, may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he or she appears, and until he or she does so, may stay all proceedings by him or her on behalf of the party for whom he or she assumes to appear. [2011 c 336 § 59; Code 1881 § 3282; 1863 p 405 § 8; RRS § 132.]

2.44.040 Change of attorneys. The attorney in an action or special proceeding, may be changed at any time before judgment or final determination as follows:

(1) Upon his or her own consent, filed with the clerk or entered upon the minutes; or

(2) Upon the order of the court, or a judge thereof, on the application of the client, or for other sufficient cause; but no such change can be made until the charges of such attorney have been paid by the party asking such change to be made. [2011 c 336 § 60; Code 1881 § 3283; 1863 p 405 § 9; RRS § 133.]

2.44.050 Notice of change and substitution. When an attorney is changed, as provided in RCW 2.44.040, written notice of the change, and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party; until then, he or she shall be bound to recognize the former attorney. [2011 c 336 § 61; Code 1881 § 3284; 1863 p 405 § 10; RRS § 134.]

2.44.060 Death or removal of attorney—Proceedings. When an attorney dies, or is removed, or suspended, or ceases to act as such, a party to an action for whom he or she was acting as attorney, must, at least twenty days before any further proceedings against him or her, be required by the adverse party, by written notice, to appoint another attorney, or to appear in person. [2011 c 336 § 62; Code 1881 § 3285; 1863 p 405 § 11; RRS § 135.]

Chapter 2.48 RCW STATE BAR ACT

Sections

2.48.080	Admission of veterans—Establishment of requirements if in service.
2.48.090	Admission of veterans—Establishment of requirements if discharged.
2.48.150	Admission fees.
2.48.160	Suspension for nonpayment of fees.
2.48.170	Only active members may practice law.
2.48.220	Grounds of disbarment or suspension.

2.48.080 Admission of veterans—Establishment of requirements if in service. If an applicant under RCW 2.48.070 through 2.48.110 is, at the time he or she applies for admission to practice law in the state of Washington, still in the armed forces of the United States, he or she may establish the requirements of the proviso in RCW 2.48.070 by a letter or certificate from his or her commanding officer and by the certificates of at least two active members of the Washington state bar association. [2011 c 336 § 63; 1945 c 181 § 2; Rem. Supp. 1945 § 138-7B.]

[2011 RCW Supp—page 14]

2.48.090 Admission of veterans—Establishment of requirements if discharged. If an applicant under RCW 2.48.070 through 2.48.110 is, at the time he or she applies for admission to practice law in the state of Washington, no longer in the armed forces of the United States, he or she may establish the requirements of the proviso in RCW 2.48.070 as follows:

(1) If he or she shall have been an enlisted person, by producing an honorable discharge, and by the certificates of at least two active members of the Washington state bar association.

(2) If he or she shall have been an officer, by an affidavit showing that he or she has been relieved from active duty under circumstances other than dishonorable, and by the certificates of at least two active members of the Washington state bar association. [2011 c 336 § 64; 1945 c 181 § 3; Rem. Supp. 1945 § 138-7C.]

2.48.150 Admission fees. Applicants for admission to the bar upon accredited certificates or upon examination, not having been admitted to the bar in another state or territory, shall pay a fee of twenty-five dollars and all other applicants a fee of fifty dollars. Said admission fees shall be used to pay the expenses incurred in connection with examining and admitting applicants to the bar, including salaries of examiners, and any balance remaining at the close of each biennium shall be paid to the state treasurer and be by him or her credited to the general fund. [2011 c 336 § 65; 1933 c 94 § 11; RRS § 138-11.]

Rules of court: *Admission—APR 3(d).*

2.48.160 Suspension for nonpayment of fees. Any member failing to pay any fees after the same become due, and after two months' written notice of his or her delinquency, must be suspended from membership in the state bar, but may be reinstated upon payment of accrued fees and such penalties as may be imposed by the board of governors, not exceeding double the amount of the delinquent fee. [2011 c 336 § 66; 1933 c 94 § 12; RRS § 138-12.]

2.48.170 Only active members may practice law. No person shall practice law in this state subsequent to the first meeting of the state bar unless he or she shall be an active member thereof as hereinbefore defined: PROVIDED, That a member of the bar in good standing in any other state or jurisdiction shall be entitled to appear in the courts of this state under such rules as the board of governors may prescribe. [2011 c 336 § 67; 1933 c 94 § 13; RRS § 138-13.]

Rules of court: *Admission—APR 5.*

2.48.220 Grounds of disbarment or suspension. An attorney or counselor may be disbarred or suspended for any of the following causes arising after his or her admission to practice:

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

(2) Willful disobedience or violation of an order of the court requiring him or her to do or forbear an act connected

with, or in the course of, his or her profession, which he or she ought in good faith to do or forbear.

(3) Violation of his or her oath as an attorney, or of his or her duties as an attorney and counselor.

(4) Corruptly or willfully, and without authority, appearing as attorney for a party to an action or proceeding.

(5) Lending his or her name to be used as attorney and counselor by another person who is not an attorney and counselor.

(6) For the commission of any act involving moral turpitude, dishonesty, or corruption, whether the same be committed in the course of his or her relations as an attorney or counselor at law, or otherwise, and whether the same constitute a felony or misdemeanor or not; and if the act constitute a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disbarment or suspension from practice therefor.

(7) Misrepresentation or concealment of a material fact made in his or her application for admission or in support thereof.

(8) Disbarment by a foreign court of competent jurisdiction.

(9) Practicing law with or in cooperation with a disbarred or suspended attorney, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended attorney, or permitting a disbarred or suspended attorney to use his or her name for the practice of law, or practicing law for or on behalf of a disbarred or suspended attorney, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended attorney or with any person not a licensed attorney.

(10) Gross incompetency in the practice of the profession.

(11) Violation of the ethics of the profession. [2011 c 336 § 68; 1921 c 126 § 14; 1909 c 139 § 7; RRS § 139-14.]

Rules of court: *RLD 1.1.*

**Chapter 2.50 RCW
LEGAL AID**

Sections

- 2.50.070 Legal aid county committee created.
- 2.50.080 Supervision.

2.50.070 Legal aid county committee created. The legal aid county committee (hereinafter called the committee), if created and continued by resolution of the bar board, shall consist of three members chosen by the bar board as follows: A member of the bar board, who shall be chair, a judge of the superior court of the county, and an active member of the Washington state bar association, resident in the county. [2011 c 336 § 69; 1939 c 93 § 7; RRS § 10007-207. Formerly RCW 74.36.070.]

2.50.080 Supervision. Among the powers to supervise the actual operation of any such bureau, which shall be exercised either by the bar board itself or in its discretion by the committee, are the following:

(1) To appoint and remove at will the director and to fix the amount of his or her salary not in excess of two hundred dollars per month;

(2) To engage and discharge all other employees of the bureau and to fix their salaries or remuneration;

(3) To assist the director in supplying the free services of attorneys for the bureau;

(4) To cooperate with the dean of any law school now or hereafter established within this state respecting the participation of law students in the rendition of services by the bureau under the guidance of the director—however, by this provision, no law student shall be deemed authorized to represent as an attorney in a court of record any legal aid client;

(5) To require of the director periodically written statements of account and written reports upon any and all subjects within the operation of the bureau;

(6) To prescribe rules and regulations, always subject to the bar board, for determination of the indigent persons who are entitled to legal aid, for determination of the kinds of legal problems and cases subject to legal aid, and for determination of all operative legal aid policies not inconsistent with this chapter;

(7) To advise the county board, for its budget upon its written request, as to the estimated amount of county funds reasonably required to effectively operate the bureau for the ensuing fiscal year;

(8) To receive county funds allocated by the county board for the bureau, and to render an account thereof at the times and in the manner reasonably required by the county board;

(9) To disburse such county funds, after receipt thereof, solely for the purposes contemplated by this chapter. [2011 c 336 § 70; 1939 c 93 § 8; RRS § 10007-208. Formerly RCW 74.36.080.]

**Chapter 2.56 RCW
ADMINISTRATOR FOR THE COURTS**

Sections

- 2.56.070 Holding court in another county—Reimbursement for expenses.

2.56.070 Holding court in another county—Reimbursement for expenses. For attendance while holding court in another county or district pursuant to the direction of the chief justice, a judge shall be entitled to receive from the county to which he or she is sent reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended. [2011 c 336 § 71; 1981 c 186 § 4; 1957 c 259 § 7.]

**Title 3
DISTRICT COURTS—
COURTS OF LIMITED JURISDICTION**

Chapters

- 3.20 Venue.
- 3.30 District courts.

- 3.34** District judges.
- 3.50** Municipal courts—Alternate provision.
- 3.58** Salaries and expenses.
- 3.62** Income of court.
- 3.66** Jurisdiction and venue.

Chapter 3.20 RCW VENUE

Sections

- 3.20.100 Change of venue—Affidavit of prejudice.

3.20.100 Change of venue—Affidavit of prejudice.

If, previous to the commencement of any trial before a justice of the peace, the defendant, his or her attorney or agent, shall make and file with the justice an affidavit that the deponent believes that the defendant cannot have an impartial trial before such justice, it shall be the duty of the justice to forthwith transmit all papers and documents belonging to the case to the next nearest justice of the peace in the same county, who is not of kin to either party, sick, absent from the county, or interested in the result of the action, either as counsel or otherwise. The justice to whom such papers and documents are so transmitted shall proceed as if the suit had been instituted before him or her. Distance, as contemplated by this section, shall mean to be by the nearest traveled route. The costs of such change of venue shall abide the result of the suit. In precincts, and incorporated cities and towns where there are two or more justices of the peace, any one of them shall be considered the next nearest justice of the peace. [2011 c 336 § 72; 1943 c 126 § 1; 1881 p 8 §§ 2, 3; Code 1881 § 1938; 1867 p 88 § 2; Rem. Supp. 1943 § 1774.]

Chapter 3.30 RCW DISTRICT COURTS

Sections

- 3.30.090 Violations bureau.

3.30.090 Violations bureau. A violations bureau may be established by any city or district court having jurisdiction of traffic cases to assist in processing traffic cases. As designated by written order of the court having jurisdiction of traffic cases, specific offenses under city ordinance, county resolution, or state law may be processed by such bureau. Such bureau may be authorized to receive the posting of bail for such specified offenses, and, as authorized by the court order, to accept forfeiture of bail and payment of monetary penalties. The court order shall specify the amount of bail to be posted and shall also specify the circumstances or conditions which will require an appearance before the court. Such bureau, upon accepting the prescribed bail, shall issue a receipt to the alleged violator, which receipt shall bear a legend informing him or her of the legal consequences of bail forfeiture. The bureau shall transfer daily to the clerk of the proper department of the court all bail posted for offenses where forfeiture is not authorized by the court order, as well as copies of all receipts. All forfeitures or penalties paid to a violations bureau for violations of municipal ordinances shall be placed in the city general fund or such other fund as may

[2011 RCW Supp—page 16]

be prescribed by ordinance. All forfeitures or penalties paid to a violations bureau for violations of state laws or county resolutions shall be remitted at least monthly to the county treasurer for deposit in the current expense fund. Employees of violations bureaus of a city shall be city employees under any applicable municipal civil service system. [2011 c 336 § 73; 1979 ex.s. c 136 § 15; 1971 c 73 § 4; 1961 c 299 § 9.]

Additional notes found at www.leg.wa.gov

Chapter 3.34 RCW DISTRICT JUDGES

Sections

- 3.34.010 District judges—Number for each county.

3.34.010 District judges—Number for each county.

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, five; Chelan, two; Clallam, two; Clark, six; Columbia, one; Cowlitz, three; Douglas, one; Ferry, one; Franklin, one; Garfield, one; Grant, three; Grays Harbor, two; Island, one; Jefferson, one; King, twenty-three in 2009, twenty-five in 2010, and twenty-six in 2011; Kitsap, four; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one; Skagit, two; Skamania, one; Snohomish, eight; Spokane, eight; Stevens, one; Thurston, three; Wahkiakum, one; Walla Walla, two; Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020. [2011 c 43 § 1. Prior: 2009 c 86 § 1; 2009 c 26 § 1; 2008 c 63 § 1; 2005 c 91 § 1; 2003 c 97 § 1; 2002 c 138 § 1; 1998 c 64 § 1; 1995 c 168 § 1; 1994 c 111 § 1; 1991 c 354 § 1; 1989 c 227 § 6; 1987 c 202 § 111; 1975 1st ex.s. c 153 § 1; 1973 1st ex.s. c 14 § 1; 1971 ex.s. c 147 § 1; 1970 ex.s. c 23 § 1; 1969 ex.s. c 66 § 1; 1965 ex.s. c 110 § 5; 1961 c 299 § 10.]

District judge position for Clark county—2005 c 91: See note following RCW 3.34.025.

Effective date—2003 c 97: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 97 § 6.]

Intent—1989 c 227: See note following RCW 3.38.070.

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

Additional notes found at www.leg.wa.gov

Chapter 3.50 RCW MUNICIPAL COURTS—ALTERNATE PROVISION

Sections

- 3.50.440 Penalty if no other punishment prescribed.

3.50.440 Penalty if no other punishment prescribed.

Every person convicted by the municipal court of a violation of the criminal provisions of an ordinance for which no punishment is specifically prescribed in the ordinance is guilty of a gross misdemeanor and shall be punished by a fine of not more than five thousand dollars or imprisonment in the city jail for up to three hundred sixty-four days, or both such fine and imprisonment. [2011 c 96 § 2; 2003 c 53 § 3; 1984 c 258 § 120; 1961 c 299 § 93.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Additional notes found at www.leg.wa.gov

Chapter 3.58 RCW SALARIES AND EXPENSES

Sections

3.58.010 Salaries of full time district court judges.

3.58.010 Salaries of full time district court judges.

The annual salary of each full time district court judge shall be established by the Washington citizen's commission on salaries for elected officials. A member of the legislature whose term of office is partly coextensive with or extends beyond the present term of office of any of the officials whose salary is increased by virtue of the provisions of RCW 43.03.010, 2.04.092, 2.06.062, 2.08.092, and 3.58.010 shall be eligible to be appointed or elected to any of the offices the salary of which is increased hereby but he or she shall not be entitled to receive such increased salary until after the expiration of his or her present term of office and his or her subsequent election or reelection to the office to which he or she was appointed or elected respectively during his or her term of office as legislator. [2011 c 336 § 74; 1986 c 155 § 7; 1985 c 7 § 1; 1983 c 186 § 2; 1980 c 162 § 8; 1979 ex.s. c 255 § 8; 1977 ex.s. c 318 § 5; 1975 1st ex.s. c 263 § 5; 1975 c 33 § 3; 1974 ex.s. c 149 § 6 (Initiative Measure No. 282, approved November 6, 1973); 1972 ex.s. c 100 § 4; 1969 c 52 § 1; 1965 c 147 § 1; 1961 c 299 § 100.]

District court judges' salaries: State Constitution Art. 28 § 1.

District courts, judges pro tempore, salaries: RCW 3.34.130.

Municipal courts, cities over 400,000, judges' salaries: RCW 35.20.160.

Superior courts, judges' salaries: RCW 2.08.092.

Washington citizens' commission on salaries for elected officials: RCW 43.03.305.

Additional notes found at www.leg.wa.gov

Chapter 3.62 RCW INCOME OF COURT

Sections

3.62.020 Costs, fees, fines, forfeitures, and penalties except city cases—Disposition—Interest.
3.62.060 Filing fees in civil cases—Surcharge—Fees allowed as court costs.

3.62.020 Costs, fees, fines, forfeitures, and penalties except city cases—Disposition—Interest.

(1) Except as provided in subsection (4) of this section, all costs, fees, fines, forfeitures and penalties assessed and collected in whole or in part by district courts, except costs, fines, forfeitures and penalties assessed and collected, in whole or in part, because of the violation of city ordinances, shall be remitted by the clerk of the district court to the county treasurer at least monthly, together with a financial statement as required by the state auditor, noting the information necessary for crediting of such funds as required by law.

(2) Except as provided in RCW 10.99.080 and this section, the county treasurer shall remit thirty-two percent of the

noninterest money received under subsection (1) of this section except certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. With the exception of funds to be transferred to the judicial stabilization trust account under RCW 3.62.060(2), money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received by the county treasurer under subsection (1) of this section shall be deposited in the county current expense fund. Funds deposited under this subsection that are attributable to the county's portion of a surcharge imposed under RCW 3.62.060(2) must be used to support local trial court and court-related functions.

(4) All money collected for county parking infractions shall be remitted by the clerk of the district court at least monthly, with the information required under subsection (1) of this section, to the county treasurer for deposit in the county current expense fund.

(5) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts. [2011 1st sp.s. c 44 § 1; 2009 c 479 § 5; 2004 c 15 § 4. Prior: 1995 c 301 § 31; 1995 c 291 § 5; 1988 c 169 § 3; 1985 c 389 § 5; 1984 c 258 § 306; 1971 c 73 § 8; 1969 ex.s. c 199 § 2; 1961 c 299 § 106.]

Effective date—2011 1st sp.s. c 44: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 44 § 7.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—2004 c 15: See note following RCW 10.99.080.

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

Additional notes found at www.leg.wa.gov

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

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

court any other fees or charges up to and including the rendition of judgment in the action other than those listed.

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

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

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

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

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

(g) At the option of the district court:

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

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

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

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

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

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

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

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

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

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

(2)(a) Until July 1, 2013, in addition to the fees required to be collected under this section, clerks of the district courts must collect a surcharge of twenty dollars on all fees required to be collected under subsection (1)(a) of this section.

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

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

(3) The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded. [2011 1st sp.s. c 44 § 4. Prior: 2009 c 572 § 1; 2009 c 372 § 1; 2007 c 46 § 3; 2005 c 457 § 9; 2003 c 222 §

15; 1992 c 62 § 8; 1990 c 172 § 2; 1987 c 382 § 2; 1984 c 258 § 309; 1981 c 330 § 1; 1980 c 162 § 9; 1969 c 25 § 1; 1965 c 55 § 1; 1961 c 299 § 110.]

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

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

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

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

Additional notes found at www.leg.wa.gov

Chapter 3.66 RCW

JURISDICTION AND VENUE

Sections

3.66.100 Territorial jurisdiction—Process—Limitation.

3.66.100 Territorial jurisdiction—Process—Limitation. (1) Every district judge having authority to hear a particular case may issue criminal process in and to any place in the state.

(2) Every district judge having authority to hear a particular case may issue civil process, including writs of execution, attachment, garnishment, and replevin, in and to any place as permitted by statute or rule. This statute does not authorize service of process pursuant to RCW 4.28.180 in actions filed pursuant to chapter 12.40 RCW, except in actions brought against an owner under chapter 59.18 RCW, or in civil infraction matters. [2011 c 132 § 3; 1998 c 73 § 1; 1987 c 442 § 1101; 1984 c 258 § 701; 1961 c 299 § 121.]

Issuance of process

infractions generally: RCW 7.80.020.

natural resource infractions: RCW 7.84.120.

traffic infractions: RCW 46.63.130.

Additional notes found at www.leg.wa.gov

Title 4

CIVIL PROCEDURE

Chapters

- 4.08 Parties to actions.**
- 4.12 Venue—Jurisdiction.**
- 4.14 Removal of certain actions to superior court.**
- 4.16 Limitation of actions.**
- 4.20 Survival of actions.**
- 4.22 Contributory fault—Effect—Imputation—Contribution—Settlement agreements.**
- 4.24 Special rights of action and special immunities.**
- 4.28 Commencement of actions.**
- 4.32 Pleadings.**
- 4.36 General rules of pleading.**
- 4.56 Judgments—Generally.**
- 4.60 Judgment by confession.**
- 4.68 Procedure to bind joint debtor.**
- 4.72 Vacation and modification of judgments.**
- 4.84 Costs.**
- 4.92 Actions and claims against state.**
- 4.96 Actions against political subdivisions, municipal and quasi-municipal corporations.**

Chapter 4.08 RCW
PARTIES TO ACTIONS

Sections

4.08.150	Substitution and interpleader.
4.08.160	Action to determine conflicting claims to property.
4.08.170	Action to determine conflicting claims to property—Disclaimer and deposit in court.
4.08.180	Action to determine conflicting claims to property—Trial of issue.

4.08.150 Substitution and interpleader. A defendant against whom an action is pending upon a contract, or for specific real or personal property, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him or her, makes against him or her a demand for the same debt or property, upon due notice to such person and the adverse party, may apply to the court for an order to substitute such person in his or her place, and discharge him or her from liability to either party on his or her depositing in court the amount of the debt, or delivering the property or its value to such person as the court may direct; and the court may make the order. [2011 c 336 § 75; Code 1881 § 22; 1877 p 6 § 22; 1869 p 7 § 22; 1854 p 132 § 12; RRS § 198.]

Rules of court: *Interpleader—CR 22; Substitution—CR 25.*

4.08.160 Action to determine conflicting claims to property. Anyone having in his or her possession, or under his or her control, any property or money, or being indebted, where more than one person claims to be the owner of, entitled to, interested in, or to have a lien on, such property, money, or indebtedness, or any part thereof, may commence an action in the superior court against all or any of such persons, and have their rights, claims, interest, or liens adjudged, determined, and adjusted in such action. [2011 c 336 § 76; 1890 p 93 § 1; RRS § 199.]

4.08.170 Action to determine conflicting claims to property—Disclaimer and deposit in court. In any action commenced under RCW 4.08.160, the plaintiff may disclaim any interest in the money, property, or indebtedness, and deposit with the clerk of the court the full amount of such money or indebtedness, or other property, and he or she shall not be liable for any costs accruing in said action. And the clerks of the various courts shall receive and file such complaint, and all other officers shall execute the necessary processes to carry out the purposes of this section, and RCW 4.08.160 and 4.08.180, free from all charge to said plaintiff, and the court, in its discretion, shall determine the liability for costs of the action. [2011 c 336 § 77; 1890 p 93 § 2; RRS § 200.]

4.08.180 Action to determine conflicting claims to property—Trial of issue. Either of the defendants may set up or show any claim or lien he or she may have to such property, money, or indebtedness, or any part thereof, and the superior right, title, or lien, whether legal or equitable, shall prevail.

The court or judge thereof may make all necessary orders, during the pendency of said action, for the preserva-

tion and protection of the rights, interests, or liens of the several parties. [2011 c 336 § 78; 1890 p 94 § 3; RRS § 201.]

Chapter 4.12 RCW
VENUE—JURISDICTION

Sections

4.12.030	Grounds authorizing change of venue.
4.12.070	Change to newly created county.

4.12.030 Grounds authorizing change of venue. The court may, on motion, in the following cases, change the place of trial when it appears by affidavit, or other satisfactory proof:

(1) That the county designated in the complaint is not the proper county; or,

(2) That there is reason to believe that an impartial trial cannot be had therein; or,

(3) That the convenience of witnesses or the ends of justice would be forwarded by the change; or,

(4) That from any cause the judge is disqualified; which disqualification exists in either of the following cases: In an action or proceeding to which he or she is a party, or in which he or she is interested; when he or she is related to either party by consanguinity or affinity, within the third degree; when he or she has been of counsel for either party in the action or proceeding. [2011 c 336 § 79; Code 1881 § 51; 1877 p 12 § 52; 1875 p 6 § 8; 1869 p 13 § 52; 1854 p 134 § 16; RRS § 209.]

4.12.070 Change to newly created county. Any party in a civil action pending in the superior court in a county out of whose limits a new county, in whole or in part, has been created, may file with the clerk of such superior court an affidavit setting forth that he or she is a resident of such newly created county, and that the venue of such action is transitory, or that the venue of such action is local, and that it ought properly to be tried in such newly created county; and thereupon the clerk shall make out a transcript of the proceedings already had in such action in such superior court, and certify it under the seal of the court, and transmit such transcript, together with the papers on file in his or her office connected with such action, to the clerk of the superior court of such newly created county, wherein it shall be proceeded with as in other cases. [2011 c 336 § 80; 1891 c 33 § 2; Code 1881 § 53; 1877 p 12 § 54; 1869 p 14 § 54; 1854 p 377 § 2; RRS § 211.]

Chapter 4.14 RCW
**REMOVAL OF CERTAIN ACTIONS
TO SUPERIOR COURT**

Sections

4.14.020	Petition for removal—Contents—Filing—Notice.
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4.14.020 Petition for removal—Contents—Filing—Notice. (1) A defendant or defendants desiring to remove any civil action from a justice court as authorized by RCW 4.14.010 shall file in the superior court in the county where such action is pending, a verified petition containing a short and plain statement of the facts which entitle him, her, or

them to removal together with a copy of all process, pleadings and orders served upon him, her, or them in such action.

(2) The petition for removal of a civil action or proceeding shall be filed within twenty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within twenty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order, or other paper, including the defendant's answer, from which it may first be ascertained that the case is or has become removable.

(3) Promptly after the filing of such petition the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the justice court, which shall effect the removal and the justice court shall proceed no further unless and until the case is remanded. [2011 c 336 § 81; 1967 ex.s. c 46 § 5.]

Chapter 4.16 RCW LIMITATION OF ACTIONS

Sections

4.16.070	Actions limited to five years.
4.16.080	Actions limited to three years.
4.16.180	Statute tolled by absence from state, concealment, etc.
4.16.200	Statute tolled by death.
4.16.240	Effect of reversal of judgment on appeal.
4.16.250	Disability must exist when right of action accrued.
4.16.350	Action for injuries resulting from health care or related services—Physicians, dentists, nurses, etc.—Hospitals, clinics, nursing homes, etc.

4.16.070 Actions limited to five years. No action for the recovery of any real estate sold by an executor or administrator under the laws of this state shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale, and no action for any estate sold by a guardian shall be maintained by the ward, or by any person claiming under him or her, unless commenced within five years next after the termination of the guardianship, except that minors, and other persons under legal disability to sue at the time when the right of action first accrued, may commence such action at any time within three years after the removal of the disability. [2011 c 336 § 82; 1890 p 81 § 1; RRS § 158. Prior: 1863 p 245 §§ 251, 252; 1860 p 205 §§ 217, 218; 1854 p 290 §§ 137, 138.]

Age of majority: Chapter 26.28 RCW.

Probate

actions by and against executors, etc.: Chapter 11.48 RCW.

guardianship: Chapters 11.88, 11.92 RCW.

sales and mortgages of real estate: Chapter 11.56 RCW; RCW 11.60.010.

Sales not voided by irregularities: RCW 11.56.115.

4.16.080 Actions limited to three years. The following actions shall be commenced within three years:

- (1) An action for waste or trespass upon real property;
- (2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

(3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

(4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his or her official capacity and by virtue of his or her office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subsection shall not apply to action for an escape;

(6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his or her custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: PROVIDED, HOWEVER, The cause of action for such misappropriation, penalty, or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise. [2011 c 336 § 83; 1989 c 38 § 2; 1937 c 127 § 1; 1923 c 28 § 1; Code 1881 § 28; 1869 p 8 § 28; 1854 p 363 § 4; RRS § 159.]

Reviser's note: Transitional proviso omitted from subsection (6). The proviso reads: "PROVIDED, FURTHER, That no action heretofore barred under the provisions of this paragraph shall be commenced after ninety days from the time this act becomes effective;"

4.16.180 Statute tolled by absence from state, concealment, etc. If the cause of action shall accrue against any person who is a nonresident of this state, or who is a resident of this state and shall be out of the state, or concealed therein, such action may be commenced within the terms herein respectively limited after the coming, or return of such person into the state, or after the end of such concealment; and if after such cause of action shall have accrued, such person shall depart from and reside out of this state, or conceal himself or herself, the time of his or her absence or concealment shall not be deemed or taken as any part of the time limit for the commencement of such action. [2011 c 336 § 84; 1927 c 132 § 1; Code 1881 § 36; 1854 p 364 § 10; RRS § 168.]

4.16.200 Statute tolled by death. Limitations on actions against a person who dies before the expiration of the time otherwise limited for commencement thereof are as set forth in chapter 11.40 RCW. Subject to the limitations on claims against a deceased person under chapter 11.40 RCW, if a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his or her representatives after the expiration of the time and

within one year from his or her death. [2011 c 336 § 85; 1989 c 333 § 8; Code 1881 § 38; 1877 p 9 § 38; 1854 p 364 § 12; RRS § 170.]

Decedents, claims against, time limits: RCW 11.40.051, 11.40.060.

Additional notes found at www.leg.wa.gov

4.16.240 Effect of reversal of judgment on appeal. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on error or appeal, the plaintiff, or if he or she dies and the cause of action survives, his or her heirs or representatives may commence a new action within one year after reversal. [2011 c 336 § 86; Code 1881 § 41; 1877 p 10 § 42; 1854 p 365 § 15; RRS § 173.]

4.16.250 Disability must exist when right of action accrued. No person shall avail himself or herself of a disability unless it existed when his or her right of action accrued. [2011 c 336 § 87; Code 1881 § 42; 1877 p 10 § 43; 1854 p 365 § 16; RRS § 174.]

4.16.350 Action for injuries resulting from health care or related services—Physicians, dentists, nurses, etc.—Hospitals, clinics, nursing homes, etc. Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976, against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his or her estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his or her employment, including, in the event such employee or agent is deceased, his or her estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his or her employment, including, in the event such officer, director, employee, or agent is deceased, his or her estate or personal representative; based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his or her representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: **PROVIDED**, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient or

the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in RCW 4.16.340(5). [2011 c 336 § 88; 2006 c 8 § 302. Prior: 1998 c 147 § 1; 1988 c 144 § 2; 1987 c 212 § 1401; 1986 c 305 § 502; 1975-'76 2nd ex.s. c 56 § 1; 1971 c 80 § 1.]

Purpose—Findings—Intent—2006 c 8 §§ 301 and 302: "The purpose of this section and section 302, chapter 8, Laws of 2006 is to respond to the court's decision in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136 (1998), by expressly stating the legislature's rationale for the eight-year statute of repose in RCW 4.16.350.

The legislature recognizes that the eight-year statute of repose alone may not solve the crisis in the medical insurance industry. However, to the extent that the eight-year statute of repose has an effect on medical malpractice insurance, that effect will tend to reduce rather than increase the cost of malpractice insurance.

Whether or not the statute of repose has the actual effect of reducing insurance costs, the legislature finds it will provide protection against claims, however few, that are stale, based on untrustworthy evidence, or that place undue burdens on defendants.

In accordance with the court's opinion in *DeYoung*, the legislature further finds that compelling even one defendant to answer a stale claim is a substantial wrong, and setting an outer limit to the operation of the discovery rule is an appropriate aim.

The legislature further finds that an eight-year statute of repose is a reasonable time period in light of the need to balance the interests of injured plaintiffs and the health care industry.

The legislature intends to reenact RCW 4.16.350 with respect to the eight-year statute of repose and specifically set forth for the court the legislature's legitimate rationale for adopting the eight-year statute of repose. The legislature further intends that the eight-year statute of repose reenacted by section 302, chapter 8, Laws of 2006 be applied to actions commenced on or after June 7, 2006." [2006 c 8 § 301.]

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

Actions for injuries resulting from health care: Chapter 7.70 RCW.

Complaint in personal injury actions not to include statement of damages: RCW 4.28.360.

Evidence of furnishing or offering to pay medical expenses inadmissible to prove liability in personal injury actions for medical negligence: Chapter 5.64 RCW.

Immunity of members of professional review committees, societies, examining, licensing or disciplinary boards from civil suit: RCW 4.24.240.

Proof and evidence required in actions against hospitals, personnel and members of healing arts: RCW 4.24.290.

Verdict or award of future economic damages in personal injury or property damage action may provide for periodic payments: RCW 4.56.260.

Additional notes found at www.leg.wa.gov

Chapter 4.20 RCW
SURVIVAL OF ACTIONS

Sections

4.20.010	Wrongful death—Right of action.
4.20.020	Wrongful death—Beneficiaries of action.
4.20.050	Action not abated by death or disability if it survives—Substitution.

4.20.010 Wrongful death—Right of action. When the death of a person is caused by the wrongful act, neglect, or default of another his or her personal representative may maintain an action for damages against the person causing the death; and although the death shall have been caused under such circumstances as amount, in law, to a felony. [2011 c 336 § 89; 1917 c 123 § 1; RRS § 183. FORMER PARTS OF SECTION: 1917 c 123 § 3 now codified as RCW 4.20.005. Prior: 1909 c 129 § 1; Code 1881 § 8; 1875 p 4 § 4; 1854 p 220 § 496.]

4.20.020 Wrongful death—Beneficiaries of action. Every such action shall be for the benefit of the wife, husband, state registered domestic partner, child or children, including stepchildren, of the person whose death shall have been so caused. If there be no wife, husband, state registered domestic partner, or such child or children, such action may be maintained for the benefit of the parents, sisters, or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his or her death.

In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just. [2011 c 336 § 90; 2007 c 156 § 29; 1985 c 139 § 1; 1973 1st ex.s. c 154 § 2; 1917 c 123 § 2; RRS § 183-1.]

Additional notes found at www.leg.wa.gov

4.20.050 Action not abated by death or disability if it survives—Substitution. No action shall abate by the death, marriage, or other disability of the party, or by the transfer of any interest therein, if the cause of action survives or continues; but the court may at any time within one year thereafter, on motion, allow the action to be continued by or against his or her representatives or successors in interest. [2011 c 336 § 91; Code 1881 § 17; 1877 p 6 § 17; 1869 p 6 § 17; 1854 p 132 § 11; RRS § 193.]

Rules of court: *Cf. RAP 3.2, 18.22.*

Chapter 4.22 RCW
CONTRIBUTORY FAULT—EFFECT—
IMPUTATION—CONTRIBUTION—
SETTLEMENT AGREEMENTS

Sections

4.22.050	Enforcement of contribution.
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4.22.050 Enforcement of contribution. (1) If the comparative fault of the parties to a claim for contribution has been established previously by the court in the original action, a party paying more than that party's equitable share of the obligation, upon motion, may recover judgment for contribution.

[2011 RCW Supp—page 22]

(2) If the comparative fault of the parties to the claim for contribution has not been established by the court in the original action, contribution may be enforced in a separate action, whether or not a judgment has been rendered against either the person seeking contribution or the person from whom contribution is being sought.

(3) If a judgment has been rendered, the action for contribution must be commenced within one year after the judgment becomes final. If no judgment has been rendered, the person bringing the action for contribution either must have (a) discharged by payment the common liability within the period of the statute of limitations applicable to the claimant's right of action against him or her and commenced the action for contribution within one year after payment, or (b) agreed while the action was pending to discharge the common liability and, within one year after the agreement, have paid the liability and commenced an action for contribution. [2011 c 336 § 92; 1981 c 27 § 13.]

Chapter 4.24 RCW
SPECIAL RIGHTS OF ACTION
AND SPECIAL IMMUNITIES

Sections

4.24.060	Application of common law.
4.24.080	Action to recover leased premises used for gambling.
4.24.115	Validity of agreement to indemnify against liability for negligence relative to construction, alteration, improvement, etc., of structure or improvement attached to real estate or relative to a motor carrier transportation contract.
4.24.210	Liability of owners or others in possession of land and water areas for injuries to recreation users—Known dangerous artificial latent conditions—Other limitations.
4.24.220	Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense.
4.24.320	Action by person damaged by malicious mischief to livestock or by owner damaged by theft of livestock—Trespass damages, attorney's fees.
4.24.430	Actions by persons serving criminal sentence—Waiver of filing fees—Effect of previous claims dismissed on grounds claim was frivolous or malicious.
4.24.550	Sex offenders and kidnapping offenders—Release of information to public—Web site.
4.24.5502	Decodified.
4.24.770	Private employer not liable for injury to unauthorized third-party occupant of private employer's vehicle.
4.24.780	Liability of fire service protection agency in providing fire-fighting efforts outside of jurisdiction or emergency services.

4.24.060 Application of common law. The common law right to an action for damages done by fires, is not taken away or diminished by RCW 4.24.040, 4.24.050, and 4.24.060, but it may be pursued; but any person availing himself or herself of the provisions of RCW 4.24.040, shall be barred of his or her action at common law for the damage so sued for, and no action shall be brought at common law for kindling fires in the manner described in RCW 4.24.050; but if any such fires shall spread and do damage, the person who kindled the same and any person present and concerned in driving such lumber, by whose act or neglect such fire is suffered to spread and do damage shall be liable in an action on the case for the amount of damages thereby sustained. [2011 c 336 § 93; 1983 c 3 § 5; Code 1881 § 1229; 1877 p 300 § 6; RRS § 5649.]

4.24.080 Action to recover leased premises used for gambling. It shall be lawful for any person letting or renting any house, room, shop, or other building whatsoever, or any boat, booth, garden, or other place, which shall, at any time, be used by the lessee or occupant thereof, or any other person, with his or her knowledge or consent, for gambling purposes, upon discovery thereof, to avoid and terminate such lease, or contract of occupancy, and to recover immediate possession of the premises by an action at law for that purpose. [2011 c 336 § 94; 1957 c 7 § 3; Code 1881 § 1257; 1879 p 98 § 5; RRS § 5852.]

4.24.115 Validity of agreement to indemnify against liability for negligence relative to construction, alteration, improvement, etc., of structure or improvement attached to real estate or relative to a motor carrier transportation contract. (1) A covenant, promise, agreement, or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, or a motor carrier transportation contract, purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property:

(a) Caused by or resulting from the sole negligence of the indemnitee, his or her agents or employees is against public policy and is void and unenforceable;

(b) Caused by or resulting from the concurrent negligence of (i) the indemnitee or the indemnitee's agents or employees, and (ii) the indemnitor or the indemnitor's agents or employees, is valid and enforceable only to the extent of the indemnitor's negligence and only if the agreement specifically and expressly provides therefor, and may waive the indemnitor's immunity under industrial insurance, Title 51 RCW, only if the agreement specifically and expressly provides therefor and the waiver was mutually negotiated by the parties. This subsection applies to agreements entered into after June 11, 1986.

(2) As used in this section, a "motor carrier transportation contract" means a contract, agreement, or understanding covering: (a) The transportation of property for compensation or hire by the motor carrier; (b) entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or (c) a service incidental to activity described in (a) or (b) of this subsection, including, but not limited to, storage of property, moving equipment or trailers, loading or unloading, or monitoring loading or unloading. "Motor carrier transportation contract" shall not include agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment. [2011 c 336 § 95; 2010 c 120 § 1; 1986 c 305 § 601; 1967 ex.s. c 46 § 2.]

Additional notes found at www.leg.wa.gov

4.24.210 Liability of owners or others in possession of land and water areas for injuries to recreation users—Known dangerous artificial latent conditions—Other limitations. (1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners,

hydroelectric project owners, or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, kayaking, canoeing, rafting, nature study, winter or water sports, viewing or enjoying historical, archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4)(a) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted.

(i) A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor.

(ii) Releasing water or flows and making waterways or channels available for kayaking, canoeing, or rafting purposes pursuant to and in substantial compliance with a hydroelectric license issued by the federal energy regulatory commission, and making adjacent lands available for purposes of allowing viewing of such activities, does not create a known dangerous artificial latent condition and hydroelectric project owners under subsection (1) of this section shall not be liable for unintentional injuries to the recreational users and observers resulting from such releases and activities.

(b) Nothing in RCW 4.24.200 and this section limits or expands in any way the doctrine of attractive nuisance.

(c) Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, the following are not fees:

(a) A license or permit issued for statewide use under authority of chapter 79A.05 RCW or Title 77 RCW;

(b) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or 79A.80.040; and

(c) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW 46.09.310, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use. [2011 c 320 § 11; 2011 c 171 § 2; 2011 c 53 § 1; 2006 c 212 § 6. Prior: 2003 c 39 § 2; 2003 c 16 § 2; 1997 c 26 § 1; 1992 c 52 § 1; prior: 1991 c 69 § 1; 1991 c 50 § 1; 1980 c 111 § 1; 1979 c 53 § 1; 1972 ex.s. c 153 § 17; 1969 ex.s. c 24 § 2; 1967 c 216 § 2.]

Reviser's note: This section was amended by 2011 c 53 § 1, 2011 c 171 § 2, and by 2011 c 320 § 11, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Effective date—2011 c 320: See note following RCW 79A.80.005.

Intent—2011 c 171: "This act is intended to reconcile and conform amendments made in chapter 161, Laws of 2010 with other legislation passed during the 2010 legislative sessions, as well as provide technical amendments to codified sections affected by chapter 161, Laws of 2010. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive policy or legal implications." [2011 c 171 § 1.]

Effective date—2011 c 171: "Except for section 129 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 171 § 142.]

Finding—2003 c 16: "The legislature finds that some property owners in Washington are concerned about the possibility of liability arising when individuals are permitted to engage in potentially dangerous outdoor recreational activities, such as rock climbing. Although RCW 4.24.210 provides property owners with immunity from legal claims for any unintentional injuries suffered by certain individuals recreating on their land, the legislature finds that it is important to the promotion of rock climbing opportunities to specifically include rock climbing as one of the recreational activities that are included in RCW 4.24.210. By including rock climbing in RCW 4.24.210, the legislature intends merely to provide assurance to the owners of property suitable for this type of recreation, and does not intend to limit the application of RCW 4.24.210 to other types of recreation. By providing that a landowner shall not be liable for any unintentional injuries resulting from the condition or use of a fixed anchor used in rock climbing, the legislature recognizes that such fixed anchors are recreational equipment used by climbers for which a landowner has no duty of care." [2003 c 16 § 1.]

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

Off-road and nonhighway vehicles: Chapter 46.09 RCW.

Snowmobiles: Chapter 46.10 RCW.

4.24.220 Action for being detained on mercantile establishment premises for investigation—"Reasonable grounds" as defense. In any civil action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer or by the owner of the mercantile establishment, his or her authorized employee or agent, and that such peace officer, owner, employee, or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny or shoplifting on such premises of such merchandise. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the

person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise. [2011 c 336 § 96; 1967 c 76 § 3.]

Theft and robbery: Chapter 9A.56 RCW.

4.24.320 Action by person damaged by malicious mischief to livestock or by owner damaged by theft of livestock—Treble damages, attorney's fees. Any person whose livestock is damaged as a result of actions described in RCW 16.52.205 or any owner of livestock who suffers damage as a result of a willful, unauthorized act described in RCW 9A.56.080, 9A.56.083, or 16.52.320 may bring an action against the person or persons committing the act in a court of competent jurisdiction for exemplary damages up to three times the actual damages sustained, plus attorney's fees. As used in this section, "livestock" means the animals specified in RCW 9A.56.080 and 16.52.011. [2011 c 67 § 2; 2005 c 419 § 2; 2003 c 53 § 4; 1979 c 145 § 1; 1977 ex.s. c 174 § 3.]

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

4.24.430 Actions by persons serving criminal sentence—Waiver of filing fees—Effect of previous claims dismissed on grounds claim was frivolous or malicious. If a person serving a criminal sentence in a federal, state, local, or privately operated correctional facility seeks leave to proceed in state court without payment of filing fees in any civil action or appeal against the state, a state or local governmental agency or entity, or a state or local official, employee, or volunteer acting in such capacity, except an action that, if successful, would affect the duration of the person's confinement, the court shall deny the request for waiver of the court filing fees if the person has, on three or more occasions while incarcerated or detained in any such facility, brought an action or appeal that was dismissed by a state or federal court on grounds that it was frivolous or malicious. One of the three previous dismissals must have involved an action or appeal commenced after July 22, 2011. A court may permit the person to commence the action or appeal without payment of filing fees if the court determines the person is in imminent danger of serious physical injury. [2011 c 220 § 1.]

4.24.550 Sex offenders and kidnapping offenders—Release of information to public—Web site. (1) In addition to the disclosure under subsection (5) of this section, public agencies are authorized to release information to the public regarding sex offenders and kidnapping offenders when the agency determines that disclosure of the information is relevant and necessary to protect the public and counteract the danger created by the particular offender. This authorization applies to information regarding: (a) Any person adjudicated or convicted of a sex offense as defined in RCW 9A.44.128 or a kidnapping offense as defined by RCW 9A.44.128; (b) any person under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense; (c) any person committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW; (d) any person found

not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW; and (e) any person found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW.

(2) Except for the information specifically required under subsection (5) of this section, the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) The level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to reside, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety.

(3) Except for the information specifically required under subsection (5) of this section, local law enforcement agencies shall consider the following guidelines in determining the extent of a public disclosure made under this section: (a) For offenders classified as risk level I, the agency shall share information with other appropriate law enforcement agencies and, if the offender is a student, the public or private school regulated under Title 28A RCW or chapter 72.40 RCW which the offender is attending, or planning to attend. The agency may disclose, upon request, relevant, necessary, and accurate information to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found; (b) for offenders classified as risk level II, the agency may also disclose relevant, necessary, and accurate information to public and private schools, child day care centers, family day care providers, public libraries, businesses and organizations that serve primarily children, women, or vulnerable adults, and neighbors and community groups near the residence where the offender resides, expects to reside, or is regularly found; (c) for offenders classified as risk level III, the agency may also disclose relevant, necessary, and accurate information to the public at large; and (d) because more localized notification is not feasible and homeless and transient offenders may present unique risks to the community, the agency may also disclose relevant, necessary, and accurate information to the public at large for offenders registered as homeless or transient.

(4) The county sheriff with whom an offender classified as risk level III is registered shall cause to be published by legal notice, advertising, or news release a sex offender community notification that conforms to the guidelines established under RCW 4.24.5501 in at least one legal newspaper with general circulation in the area of the sex offender's registered address or location. Unless the information is posted on the web site described in subsection (5) of this section, this list shall be maintained by the county sheriff on a publicly accessible web site and shall be updated at least once per month.

(5)(a) When funded by federal grants or other sources, the Washington association of sheriffs and police chiefs shall create and maintain a statewide registered kidnapping and sex offender web site, which shall be available to the public. The web site shall post all level III and level II registered sex offenders, level I registered sex offenders during the time they are out of compliance with registration requirements

under RCW 9A.44.130, and all registered kidnapping offenders in the state of Washington.

(i) For level III offenders, the web site shall contain, but is not limited to, the registered sex offender's name, relevant criminal convictions, address by hundred block, physical description, and photograph. The web site shall provide mapping capabilities that display the sex offender's address by hundred block on a map. The web site shall allow citizens to search for registered sex offenders within the state of Washington by county, city, zip code, last name, and address by hundred block.

(ii) For level II offenders, and level I sex offenders during the time they are out of compliance with registration requirements under RCW 9A.44.130, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(iii) For kidnapping offenders, the web site shall contain, but is not limited to, the same information and functionality as described in (a)(i) of this subsection, provided that it is permissible under state and federal law. If it is not permissible, the web site shall be limited to the information and functionality that is permissible under state and federal law.

(b) Until the implementation of (a) of this subsection, the Washington association of sheriffs and police chiefs shall create a web site available to the public that provides electronic links to county-operated web sites that offer sex offender registration information.

(6) Local law enforcement agencies that disseminate information pursuant to this section shall: (a) Review available risk level classifications made by the department of corrections, the department of social and health services, and the indeterminate sentence review board; (b) assign risk level classifications to all offenders about whom information will be disseminated; and (c) make a good faith effort to notify the public and residents within a reasonable period of time after the offender registers with the agency. The juvenile court shall provide local law enforcement officials with all relevant information on offenders allowed to remain in the community in a timely manner.

(7) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any discretionary risk level classification decisions or release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity in this section applies to risk level classification decisions and the release of relevant and necessary information regarding any individual for whom disclosure is authorized. The decision of a local law enforcement agency or official to classify an offender to a risk level other than the one assigned by the department of corrections, the department of social and health services, or the indeterminate sentence review board, or the release of any relevant and necessary information based on that different classification shall not, by itself, be considered gross negligence or bad faith. The immunity provided under this section applies to the release of relevant and necessary information to

other public officials, public employees, or public agencies, and to the general public.

(8) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section.

(9) Nothing in this section implies that information regarding persons designated in subsection (1) of this section is confidential except as may otherwise be provided by law.

(10) When a local law enforcement agency or official classifies an offender differently than the offender is classified by the end of sentence review committee or the department of social and health services at the time of the offender's release from confinement, the law enforcement agency or official shall notify the end of sentence review committee or the department of social and health services and submit its reasons supporting the change in classification. [2011 c 337 § 1; 2008 c 98 § 1. Prior: 2005 c 380 § 2; 2005 c 228 § 1; 2005 c 99 § 1; 2003 c 217 § 1; 2002 c 118 § 1; prior: 2001 c 283 § 2; 2001 c 169 § 2; 1998 c 220 § 6; prior: 1997 c 364 § 1; 1997 c 113 § 2; 1996 c 215 § 1; 1994 c 129 § 2; 1990 c 3 § 117.]

Effective date—2005 c 380: See note following RCW 9A.44.130.

Conflict with federal requirements—2002 c 118: "If any provision of this act or its application to any person or circumstance is held invalid due to a conflict with federal law, the conflicting part of this act is inoperative solely to the extent of the conflict, and such holding does not affect the operation of the remainder of this act or the application of the provision to other persons or circumstances." [2002 c 118 § 3.]

Findings—1997 c 113: "The legislature finds that offenders who commit kidnapping offenses against minor children pose a substantial threat to the well-being of our communities. Child victims are especially vulnerable and unable to protect themselves. The legislature further finds that requiring sex offenders to register has assisted law enforcement agencies in protecting their communities. Similar registration requirements for offenders who have kidnapped or unlawfully imprisoned a child would also assist law enforcement agencies in protecting the children in their communities from further victimization." [1997 c 113 § 1.]

Findings—Intent—1994 c 129: "The legislature finds that members of the public may be alarmed when law enforcement officers notify them that a sex offender who is about to be released from custody will live in or near their neighborhood. The legislature also finds that if the public is provided adequate notice and information, the community can develop constructive plans to prepare themselves and their children for the offender's release. A sufficient time period allows communities to meet with law enforcement to discuss and prepare for the release, to establish block watches, to obtain information about the rights and responsibilities of the community and the offender, and to provide education and counseling to their children. Therefore, the legislature intends that when law enforcement officials decide to notify the public about a sex offender's pending release that notice be given at least fourteen days before the offender's release whenever possible." [1994 c 129 § 1.]

Finding—Policy—1990 c 3 § 117: "The legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest. The legislature further finds that the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Overly restrictive confidentiality and liability laws governing the release of information about sexual predators have reduced willingness to release information that could be appropriately released under the public disclosure laws, and have increased risks to public safety. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Release of information about sexual predators to public agencies and under limited circumstances, the general public, will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems so long as the information released is rationally

related to the furtherance of those goals.

Therefore, this state's policy as expressed in RCW 4.24.550 is to require the exchange of relevant information about sexual predators among public agencies and officials and to authorize the release of necessary and relevant information about sexual predators to members of the general public." [1990 c 3 § 116.]

Release of information regarding

convicted sex offenders: RCW 9.94A.846.

juveniles found to have committed sex offenses: RCW 13.40.217.

persons in custody of department of social and health services: RCW 10.77.207, 71.05.427, 71.06.135, 71.09.120.

Additional notes found at www.leg.wa.gov

4.24.5502 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

4.24.770 Private employer not liable for injury to unauthorized third-party occupant of private employer's vehicle. (1) A private employer is not liable for any injury received by a third-party occupant of a vehicle that is owned, leased, or rented by the employer if, at the time the injuries were inflicted, the third-party occupant was riding in or on the vehicle with an employee who had explicitly acknowledged in writing the employer's policy on use of vehicles owned, leased, or rented by the employer and the third-party occupant was not:

(a) Specifically and expressly authorized by the employer to be an occupant of the vehicle; or

(b) Acting on behalf of, or for the benefit of, the employer with the knowledge or implied approval or acquiescence of the employer.

(2) For purposes of this section, "third-party occupant" means a person who occupies a vehicle owned, leased, or rented by the private employer and who is not an officer, employee, or agent, or authorized or constructive invitee of the private employer. [2011 c 82 § 3.]

Intent—Application—2011 c 82: See notes following RCW 4.92.180.

Definitions: RCW 52.12.160.

4.24.780 Liability of fire service protection agency in providing firefighting efforts outside of jurisdiction or emergency services. Any fire service protection agency, as well as the firefighters therein, whether volunteer or paid, which takes part in firefighting efforts outside its jurisdiction or provides emergency care, rescue, assistance, or recovery services at the scene of an emergency, is not liable for civil damages resulting from any act or omission in the rendering of such services, other than acts or omissions constituting gross negligence or willful or wanton misconduct. [2011 c 200 § 2.]

Chapter 4.28 RCW

COMMENCEMENT OF ACTIONS

Sections

4.28.080	Summons, how served.
4.28.100	Service of summons by publication—When authorized.
4.28.110	Manner of publication and form of summons.
4.28.140	Affidavit as to unknown heirs.
4.28.185	Personal service out-of-state—Acts submitting person to jurisdiction of courts—Saving.
4.28.200	Right of one constructively served to appear and defend or reopen.
4.28.210	Appearance, what constitutes.

4.28.325 Lis pendens in actions in United States district courts affecting title to real estate.

4.28.080 Summons, how served. Service made in the modes provided in this section is personal service. The summons shall be served by delivering a copy thereof, as follows:

(1) If the action is against any county in this state, to the county auditor or, during normal office hours, to the deputy auditor, or in the case of a charter county, summons may be served upon the agent, if any, designated by the legislative authority.

(2) If against any town or incorporated city in the state, to the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof.

(3) If against a school or fire district, to the superintendent or commissioner thereof or by leaving the same in his or her office with an assistant superintendent, deputy commissioner, or business manager during normal business hours.

(4) If against a railroad corporation, to any station, freight, ticket or other agent thereof within this state.

(5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the state.

(6) If against a domestic insurance company, to any agent authorized by such company to solicit insurance within this state.

(7)(a) If against an unauthorized foreign or alien insurance company, as provided in RCW 48.05.200.

(b) If against an unauthorized insurer, as provided in RCW 48.05.215 and 48.15.150.

(c) If against a reciprocal insurer, as provided in RCW 48.10.170.

(d) If against a nonresident surplus line broker, as provided in RCW 48.15.073.

(e) If against a nonresident insurance producer or title insurance agent, as provided in RCW 48.17.173.

(f) If against a nonresident adjuster, as provided in RCW 48.17.380.

(g) If against a fraternal benefit society, as provided in RCW 48.36A.350.

(h) If against a nonresident reinsurance intermediary, as provided in RCW 48.94.010.

(i) If against a nonresident life settlement provider, as provided in RCW 48.102.011.

(j) If against a nonresident life settlement broker, as provided in RCW 48.102.021.

(k) If against a service contract provider, as provided in RCW 48.110.030.

(l) If against a protection product guarantee provider, as provided in RCW 48.110.055.

(m) If against a discount plan organization, as provided in RCW 48.155.020.

(8) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state.

(9) If against a company or corporation other than those designated in subsections (1) through (8) of this section, to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof

or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent.

(10) If against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

(11) If against a minor under the age of fourteen years, to such minor personally, and also to his or her father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he or she resides, or in whose service he or she is employed, if such there be.

(12) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(13) If against a foreign or alien steamship company or steamship charterer, to any agent authorized by such company or charterer to solicit cargo or passengers for transportation to or from ports in the state of Washington.

(14) If against a self-insurance program regulated by chapter 48.62 RCW, as provided in chapter 48.62 RCW.

(15) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.

(16) In lieu of service under subsection (15) of this section, where the person cannot with reasonable diligence be served as described, the summons may be served as provided in this subsection, and shall be deemed complete on the tenth day after the required mailing: By leaving a copy at his or her usual mailing address with a person of suitable age and discretion who is a resident, proprietor, or agent thereof, and by thereafter mailing a copy by first-class mail, postage prepaid, to the person to be served at his or her usual mailing address. For the purposes of this subsection, "usual mailing address" does not include a United States postal service post office box or the person's place of employment. [2011 c 47 § 1; 1997 c 380 § 1; 1996 c 223 § 1; 1991 sp.s. c 30 § 28; 1987 c 361 § 1; 1977 ex.s. c 120 § 1; 1967 c 11 § 1; 1957 c 202 § 1; 1893 c 127 § 7; RRS § 226, part. FORMER PART OF SECTION: 1897 c 97 § 1 now codified in RCW 4.28.081.]

Rules of court: *Service of process—CR 4(d), (e).*

Service of process on

foreign corporation: RCW 23B.15.100 and 23B.15.310.

foreign savings and loan association: RCW 33.32.050.

nonadmitted foreign corporation: RCW 23B.18.040.

nonresident motor vehicle operator: RCW 46.64.040.

Additional notes found at www.leg.wa.gov

4.28.100 Service of summons by publication—When authorized. When the defendant cannot be found within the state, and upon the filing of an affidavit of the plaintiff, his or her agent, or attorney, with the clerk of the court, stating that he or she believes that the defendant is not a resident of the state, or cannot be found therein, and that he or she has deposited a copy of the summons (substantially in the form prescribed in RCW 4.28.110) and complaint in the post office, directed to the defendant at his or her place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by pub-

lication of the summons, by the plaintiff or his or her attorney in any of the following cases:

- (1) When the defendant is a foreign corporation, and has property within the state;
- (2) When the defendant, being a resident of this state, has departed therefrom with intent to defraud his or her creditors, or to avoid the service of a summons, or keeps himself or herself concealed therein with like intent;
- (3) When the defendant is not a resident of the state, but has property therein and the court has jurisdiction of the subject of the action;
- (4) When the action is for (a) establishment or modification of a parenting plan or residential schedule; or (b) dissolution of marriage, legal separation, or declaration of invalidity, in the cases prescribed by law;
- (5) When the action is for nonparental custody under chapter 26.10 RCW and the child is in the physical custody of the petitioner;
- (6) When the subject of the action is real or personal property in this state, and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly, or partly, in excluding the defendant from any interest or lien therein;
- (7) When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in the county where the action is brought, or satisfy or redeem from the same;
- (8) When the action is against any corporation, whether private or municipal, organized under the laws of the state, and the proper officers on whom to make service do not exist or cannot be found;
- (9) When the action is brought under RCW 4.08.160 and 4.08.170 to determine conflicting claims to property in this state. [2011 c 336 § 97; 2005 c 117 § 1; 1981 c 331 § 13; 1953 c 102 § 1. Prior: 1929 c 81 § 1; 1915 c 45 § 1; 1893 c 127 § 9; RRS § 228.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

4.28.110 Manner of publication and form of summons. The publication shall be made in a newspaper of general circulation in the county where the action is brought once a week for six consecutive weeks: PROVIDED, That publication of summons shall not be made until after the filing of the complaint, and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication. The summons must be subscribed by the plaintiff or his or her attorney or attorneys. The summons shall contain the date of the first publication, and shall require the defendant or defendants upon whom service by publication is desired, to appear and answer the complaint within sixty days from the date of the first publication of the summons; and the summons for publication shall also contain a brief statement of the object of the action. The summons for publication shall be substantially as follows:

In the superior court of the State of Washington for the county of

., Plaintiff,
vs. No.
., Defendant.

The State of Washington to the said (naming the defendant or defendants to be served by publication):

You are hereby summoned to appear within sixty days after the date of the first publication of this summons, to wit, within sixty days after the day of, 1 , and defend the above entitled action in the above entitled court, and answer the complaint of the plaintiff , and serve a copy of your answer upon the undersigned attorneys for plaintiff , at his (or their) office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which has been filed with the clerk of said court. (Insert here a brief statement of the object of the action.)

. ,
Plaintiff's Attorneys.
P.O. Address
County
Washington.

[2011 c 336 § 98; 1985 c 469 § 2; 1895 c 86 § 2; 1893 c 127 § 10; RRS § 233.]

Publication of legal notices: Chapter 65.16 RCW.

4.28.140 Affidavit as to unknown heirs. Upon presenting an affidavit to the court or judge, showing to his or her satisfaction that the heirs of such deceased person are proper parties to the action, and that their names and residences cannot with use of reasonable diligence be ascertained, such court or judge may grant an order that service of the summons in such action be made on such "Unknown heirs" by publication thereof in the same manner as in actions against nonresident defendants. [2011 c 336 § 99; 1903 c 144 § 2; RRS § 230.]

Rules of court: Cf. CR 10(a).

4.28.185 Personal service out-of-state—Acts submitting person to jurisdiction of courts—Saving. (1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

- (a) The transaction of any business within this state;
- (b) The commission of a tortious act within this state;
- (c) The ownership, use, or possession of any property whether real or personal situated in this state;
- (d) Contracting to insure any person, property, or risk located within this state at the time of contracting;
- (e) The act of sexual intercourse within this state with respect to which a child may have been conceived;
- (f) Living in a marital relationship within this state notwithstanding subsequent departure from this state, as to all proceedings authorized by chapter 26.09 RCW, so long as the petitioning party has continued to reside in this state or has

continued to be a member of the armed forces stationed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the defendant outside this state, as provided in RCW 4.28.180, with the same force and effect as though personally served within this state.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him or her is based upon this section.

(4) Personal service outside the state shall be valid only when an affidavit is made and filed to the effect that service cannot be made within the state.

(5) In the event the defendant is personally served outside the state on causes of action enumerated in this section, and prevails in the action, there may be taxed and allowed to the defendant as part of the costs of defending the action a reasonable amount to be fixed by the court as attorneys' fees.

(6) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law. [2011 c 336 § 100; 1977 c 39 § 1; 1975-'76 2nd ex.s. c 42 § 22; 1959 c 131 § 2.]

Rules of court: Cf. CR 4(e), CR 12(a), CR 82(a).

Uniform parentage act: Chapter 26.26 RCW.

4.28.200 Right of one constructively served to appear and defend or reopen. If the summons is not served personally on the defendant in the cases provided in RCW 4.28.110 and 4.28.180, he or she or his or her representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action and, except in an action for divorce, the defendant or his or her representative may in like manner be allowed to defend after judgment, and within one year after the rendition of such judgment, on such terms as may be just; and if the defense is successful, and the judgment, or any part thereof, has been collected or otherwise enforced, such restitution may thereupon be compelled as the court directs. [2011 c 336 § 101; 1893 c 127 § 12; RRS § 235.]

4.28.210 Appearance, what constitutes. A defendant appears in an action when he or she answers, demurs, makes any application for an order therein, or gives the plaintiff written notice of his or her appearance. After appearance a defendant is entitled to notice of all subsequent proceedings; but when a defendant has not appeared, service of notice or papers in the ordinary proceedings in an action need not be made upon him or her. Every such appearance made in an action shall be deemed a general appearance, unless the defendant in making the same states that the same is a special appearance. [2011 c 336 § 102; 1893 c 127 § 16; RRS § 241.]

Rules of court: *Demurrers abolished—CR 7(c).*

4.28.325 Lis pendens in actions in United States district courts affecting title to real estate. In an action in a United States district court for any district in the state of Washington affecting the title to real property in the state of Washington, the plaintiff, at the time of filing the complaint, or at any time afterwards, or a defendant, when he or she sets

up an affirmative cause of action in his or her answer, or at any time afterward, if the same be intended to affect real property, may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he or she were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: PROVIDED, HOWEVER, That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued, or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be evidenced by the recording of the court order. [2011 c 336 § 103; 1999 c 233 § 4; 1963 c 137 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 4.32 RCW PLEADINGS

Sections

4.32.150 Setoff must be pleaded.

4.32.150 Setoff must be pleaded. To entitle a defendant to a setoff he or she must set the same forth in his or her answer. [2011 c 336 § 104; Code 1881 § 502; 1877 p 108 § 506; RRS § 271.]

Chapter 4.36 RCW GENERAL RULES OF PLEADING

Sections

4.36.080 Conditions precedent, how pleaded.
4.36.130 Answer in justification and mitigation.
4.36.140 Answer in action to recover property distrained.
4.36.210 Variance in action to recover personal property.

4.36.080 Conditions precedent, how pleaded. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his or her part; and if such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance. [2011 c 336 § 105; Code 1881 § 97; 1877 p 21 § 97; 1854 p 142 § 59; RRS § 288.]

Rules of court: *Cf. CR 9(c).*

4.36.130 Answer in justification and mitigation. In an action mentioned in RCW 4.36.120, the defendant may, in his or her answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances to reduce the amount of damages; and whether he or she proves the justification or not, he or she may give in evidence the mitigating circumstances. [2011 c 336 § 106; Code 1881 § 100; 1877 p 22 § 100; 1854 p 143 § 62; RRS § 293.]

4.36.140 Answer in action to recover property distrained. In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he or she acted, was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing the damage thereon, shall be good, without setting forth the title to such real property. [2011 c 336 § 107; Code 1881 § 101; 1877 p 22 § 101; 1854 p 143 § 63; RRS § 295.]

4.36.210 Variance in action to recover personal property. Where the plaintiff in an action to recover the possession of personal property on a claim of being the owner thereof, shall fail to establish on trial such ownership, but shall prove that he or she is entitled to the possession thereof, by virtue of a special property therein, he or she shall not thereby be defeated of his or her action, but shall be permitted to amend, on reasonable terms his or her complaint, and be entitled to judgment according to the proof in the case. [2011 c 336 § 108; Code 1881 § 108; 1877 p 23 § 108; 1869 p 27 § 106; 1856 p 10 § 11; RRS § 302.]

Chapter 4.56 RCW

JUDGMENTS—GENERALLY

Sections

4.56.060	Judgment in case of setoff—When equal or less than plaintiff's debt.
4.56.120	Judgment of dismissal or nonsuit, grounds, effect—Other judgments on merits.
4.56.190	Lien of judgment.

4.56.060 Judgment in case of setoff—When equal or less than plaintiff's debt. If the amount of the setoff, duly established, be equal to the plaintiff's debt or demand, judgment shall be rendered that the plaintiff take nothing by his or her action; if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only. [2011 c 336 § 109; Code 1881 § 503; 1877 p 108 § 507; RRS § 271 1/2.]

Rules of court: *Cf. CR 54(b).*

4.56.120 Judgment of dismissal or nonsuit, grounds, effect—Other judgments on merits. An action in the superior court may be dismissed by the court and a judgment of nonsuit rendered in the following cases:

(1) Upon the motion of the plaintiff, (a) when the case is to be or is being tried before a jury, at any time before the court announces its decision in favor of the defendant upon a challenge to the legal sufficiency of the evidence, or before

the jury retire to consider their verdict, (b) when the action, whether for legal or equitable relief, is to be or is being tried before the court without a jury, at any time before the court has announced its decision: PROVIDED, That no action shall be dismissed upon the motion of the plaintiff, if the defendant has interposed a setoff as a defense, or seeks affirmative relief growing out of the same transaction, or sets up a counterclaim, either legal or equitable, to the specific property or thing which is the subject matter of the action.

(2) Upon the motion of either party, upon the written consent of the other.

(3) When the plaintiff fails to appear at the time of trial and the defendant appears and asks for a dismissal.

(4) Upon its own motion, when, upon the trial and before the final submission of the case, the plaintiff abandons it.

(5) Upon its own motion, on the refusal or neglect of the plaintiff to make the necessary parties defendants, after having been ordered so to do by the court.

(6) Upon the motion of some of the defendants, when there are others whom the plaintiff fails to prosecute with diligence.

(7) Upon its own motion, for disobedience of the plaintiff to an order of the court concerning the proceedings in the action.

(8) Upon the motion of the defendant, when, upon the trial, the plaintiff fails to prove some material fact or facts necessary to sustain his or her action, as alleged in his or her complaint. When judgment of nonsuit is given, the action is dismissed, but such judgment shall not have the effect to bar another action for the same cause. In every case, other than those mentioned in this section, the judgment shall be rendered upon the merits and shall bar another action for the same cause. [2011 c 336 § 110; 1929 c 89 § 1; RRS §§ 408, 409, 410. Formerly RCW 4.56.120, 4.56.130, and 4.56.140. Prior: Code 1881 §§ 286, 287, 288; 1877 p 58 §§ 290, 291, 292; 1869 p 69 §§ 288, 289, 290; 1854 p 171 §§ 223, 224.]

Rules of court: *Cf. CR 41(a), (b).*

4.56.190 Lien of judgment. The real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the district court of the United States rendered in this state and any judgment of the supreme court, court of appeals, superior court, or district court of this state, and every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200 and to run for a period of not to exceed ten years from the day on which such judgment was entered unless the ten-year period is extended in accordance with RCW 6.17.020(3), or unless the judgment results from a criminal sentence for a crime that was committed on or after July 1, 2000, in which case the lien will remain in effect until the judgment is fully satisfied. As used in this chapter, real estate shall not include the vendor's interest under a real estate contract for judgments rendered after August 23, 1983. If a judgment debtor owns real estate, subject to execution, jointly or in common with any other person, the judgment shall be a lien on the interest of the defendant only.

Personal property of the judgment debtor shall be held only from the time it is actually levied upon. [2011 c 106 § 4;

1994 c 189 § 3. Prior: 1987 c 442 § 1103; 1987 c 202 § 116; 1983 1st ex.s. c 45 § 5; 1980 c 105 § 3; 1971 c 81 § 16; 1929 c 60 § 1; RRS § 445; prior: 1893 c 42 § 9; Code 1881 § 321; 1869 p 78 § 317; 1860 p 51 § 234; 1857 p 11 § 15; 1854 p 175 § 240.]

Finding—2011 c 106: See note following RCW 10.82.090.

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

Entry of judgments—Superior court—District court—Small claims: RCW 6.01.020.

Execution of judgments: RCW 6.17.020.

Additional notes found at www.leg.wa.gov

Chapter 4.60 RCW

JUDGMENT BY CONFESSION

Sections

4.60.010	Judgment on confession authorized.
4.60.020	Confession by public and private corporations and minors.
4.60.060	Statement in writing—Requisites.

4.60.010 Judgment on confession authorized. On the confession of the defendant, with the assent of the plaintiff or his or her attorney, judgment may be given against the defendant in any action before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint. [2011 c 336 § 111; Code 1881 § 291; 1877 p 60 § 295; 1869 p 72 § 293; 1854 p 172 §§ 226-228; RRS § 413.]

4.60.020 Confession by public and private corporations and minors. When the action is against the state, a county or other public corporation therein, or a private corporation, or a minor, the confession shall be made by the person who at the time sustains the relation to such state, corporation, county or minor, as would authorize the service of a notice summons upon him or her; or in the case of a minor, if a guardian for the action has been appointed, then by such guardian; in all other cases the confession shall be made by the defendant in person. [2011 c 336 § 112; Code 1881 § 292; 1877 p 60 § 296; 1869 p 72 § 294; RRS § 414.]

4.60.060 Statement in writing—Requisites. A statement in writing shall be made, signed by the defendant and verified by his or her oath, to the following effect:

(1) It shall authorize the entry of judgment for a specified sum.

(2) If it be for money due or to become due, it shall state concisely the facts out of which the indebtedness arose, and shall show that the sum confessed to be due, is justly due or to become due.

(3) If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same. [2011 c 336 § 113; Code 1881 § 296; 1877 p 61 § 300; 1869 p 73 § 298; RRS § 418.]

Chapter 4.68 RCW

PROCEDURE TO BIND JOINT DEBTOR

Sections

4.68.020	Contents of summons.
4.68.030	Affidavit must accompany summons.
4.68.040	Defenses.
4.68.050	Pleadings.
4.68.060	Trial.

4.68.020 Contents of summons. The summons, as provided in RCW 4.68.010, must describe the judgment, and require the person summoned to show cause why he or she should not be bound by it, and must be served in the same manner and returnable within the same time, as the original summons. It is not necessary to file a new complaint. [2011 c 336 § 114; Code 1881 § 315; 1877 p 64 § 319; RRS § 437.]

4.68.030 Affidavit must accompany summons. The summons must be accompanied by an affidavit of the plaintiff, his or her agent, representative, or attorney, that the judgment, or some part thereof, remains unsatisfied, and must specify the amount due thereon. [2011 c 336 § 115; Code 1881 § 316; 1877 p 65 § 320; RRS § 438.]

4.68.040 Defenses. Upon the service of such summons and affidavit, the defendant may answer within the time specified therein, denying the judgment, or setting up any defense which may have arisen subsequently to the taking of the judgment, or he or she may deny his or her liability on the obligation upon which the judgment was rendered, except a discharge from such liability by the statute of limitations. [2011 c 336 § 116; Code 1881 § 317; 1877 p 65 § 321; RRS § 439.]

4.68.050 Pleadings. If the defendant in his or her answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, constitute the written allegations in the case; if he or she deny his or her liability on the obligation upon which the judgment was rendered, a copy of the original complaint and judgment, the summons with the affidavit annexed, and the answer constitute such written allegations. [2011 c 336 § 117; Code 1881 § 318; 1877 p 65 § 322; RRS § 440.]

4.68.060 Trial. The issue formed may be tried as in other cases, but when the defendant denies in his or her answer any liability on the obligation upon which the judgment was rendered, if a verdict be found against him or her, it must not exceed the amount remaining unsatisfied on such original judgment, with interest thereon. [2011 c 336 § 118; Code 1881 § 319; 1877 p 65 § 323; RRS § 441.]

Chapter 4.72 RCW

VACATION AND MODIFICATION OF JUDGMENTS

Sections

4.72.020	Motion to vacate—Time limitation.
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4.72.020 Motion to vacate—Time limitation. The proceedings to vacate or modify a judgment or order for mis-

takes or omissions of the clerk, or irregularity in obtaining the judgment or order, shall be by motion served on the adverse party or on his or her attorney in the action, and within one year. [2011 c 336 § 119; 1891 c 27 § 1; Code 1881 § 438; 1877 p 97 § 440; 1875 p 21 § 3; RRS § 466.]

Rules of court: *Cf. CR 60(b).*

Chapter 4.84 RCW

COSTS

Sections

4.84.040	Limitation on costs in certain actions.
4.84.050	Limited to one of several actions.
4.84.060	Costs to defendant.
4.84.090	Cost bill—Witnesses to report attendance.
4.84.110	Costs where tender is made.
4.84.120	Costs where deposit in court is made and rejected.
4.84.140	Costs against guardian of infant plaintiff.
4.84.150	Costs against fiduciaries.
4.84.160	Costs against assignee.
4.84.220	Bond in lieu of separate security.
4.84.240	Judgment on cost bond.
4.84.330	Actions on contract or lease which provides that attorneys' fees and costs incurred to enforce provisions be awarded to one of parties—Prevailing party entitled to attorney's fees—Waiver prohibited.

4.84.040 Limitation on costs in certain actions. In an action for an assault and battery, or for false imprisonment, libel, slander, malicious prosecution, criminal conversation or seduction, if the plaintiff recover less than ten dollars, he or she shall be entitled to no more costs or disbursements than the damage recovered. [2011 c 336 § 120; Code 1881 § 508; 1877 p 108 § 512; 1869 p 123 § 460; 1854 p 202 § 370; RRS § 477.]

4.84.050 Limited to one of several actions. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action against several parties, who might have been joined as defendants in the same action, no costs or disbursements shall be allowed to the plaintiff in more than one of such actions, which may be at his or her election, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within this state. [2011 c 336 § 121; Code 1881 § 509; 1877 p 108 § 513; 1869 p 123 § 461; 1854 p 202 § 371; RRS § 478.]

4.84.060 Costs to defendant. In all cases where costs and disbursements are not allowed to the plaintiff, the defendant shall be entitled to have judgment in his or her favor for the same. [2011 c 336 § 122; Code 1881 § 510; 1877 p 109 § 514; 1869 p 123 § 462; 1854 p 202 § 372; RRS § 479.]

4.84.090 Cost bill—Witnesses to report attendance. The prevailing party, in addition to allowance for costs, as provided in RCW 4.84.080, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions, by commission or otherwise, and the compensation of referees. The court shall allow the prevailing party all service of process charges in case such process was served by a person or persons not an officer or officers. Such

service charge shall be the same as is now allowed or shall in the future be allowed as fee and mileage to an officer. The disbursements shall be stated in detail and verified by affidavit, and shall be served on the opposite party or his or her attorney, and filed with the clerk of the court, within ten days after the judgment: PROVIDED, The clerk of the court shall keep a record of all witnesses in attendance upon any civil action, for whom fees are to be claimed, with the number of days in attendance and their mileage, and no fees or mileage for any witness shall be taxed in the cost bill unless they shall have reported their attendance at the close of each day's session to the clerk in attendance at such trial. [2011 c 336 § 123; 1949 c 146 § 1; 1905 c 16 § 1; Code 1881 § 513; 1877 p 109 § 517; 1869 p 124 § 465; 1854 p 202 § 375; Rem. Supp. 1949 § 482.]

Witness fees and mileage: Chapter 2.40 RCW.

4.84.110 Costs where tender is made. When in an action for the recovery of money, the defendant alleges in his or her answer, that, before the commencement of the action, he or she tendered to the plaintiff the full amount to which he or she is entitled, in such money as by agreement ought to be tendered, and thereupon brings into court, for the plaintiff, the amount tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant. [2011 c 336 § 124; Code 1881 § 516; 1877 p 109 § 520; 1854 p 203 § 378; RRS § 485.]

4.84.120 Costs where deposit in court is made and rejected. If the defendant in any action pending, shall at any time deposit with the clerk of the court, for the plaintiff, the amount which he or she admits to be due, together with all costs that have accrued, and notify the plaintiff thereof, and such plaintiff shall refuse to accept the same in discharge of the action, and shall not afterwards recover a larger amount than that deposited with the clerk, exclusive of interest and cost, he or she shall pay all costs that may accrue from the time such money was so deposited. [2011 c 336 § 125; Code 1881 § 517; 1877 p 110 § 521; 1854 p 203 § 379; RRS § 486.]

Conflicting claims, deposit in court, costs: RCW 4.08.170.

4.84.140 Costs against guardian of infant plaintiff. When costs are adjudged against an infant plaintiff, the guardian or person by whom he or she appeared in the action shall be responsible therefor, and payment may be enforced by execution. [2011 c 336 § 126; Code 1881 § 519; 1877 p 110 § 523; 1854 p 203 § 381; RRS § 488.]

4.84.150 Costs against fiduciaries. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered as in an action by or against a person prosecuting in his or her own right, but such costs shall be chargeable only upon or collected of the estate of the party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defense. [2011 c 336 § 127; Code 1881 § 520; 1877 p 110 § 524; 1854 p 203 § 382; RRS § 489.]

Actions by and against personal representatives, etc.: Chapter 11.48 RCW.

Chapter 4.92 RCW

ACTIONS AND CLAIMS AGAINST STATE

Sections

4.92.006	Definitions.
4.92.040	Judgments—Claims to legislature against state—Payment procedure—Inapplicability to judgments and claims against housing finance commission.
4.92.130	Tortious conduct of state—Liability account—Purpose.
4.92.150	Compromise and settlement of claims by attorney general.
4.92.160	Payment of claims and judgments.
4.92.180	State, local governments not liable for injury to unauthorized third-party occupant of state or local government vehicle.
4.92.210	Risk management—Review of claims—Settlements.
4.92.270	Risk management—Standard indemnification agreements.
4.92.280	Local government reimbursement claims.

4.84.160 Costs against assignee. When the cause of action, after the commencement of the action, by assignment, or in any other manner, becomes the property of a person not a party thereto, and the prosecution or defense is thereafter continued, such person shall be liable for the costs in the same manner as if he or she were a party, and payment thereof may be enforced by execution. [2011 c 336 § 128; Code 1881 § 521; 1877 p 110 § 525; 1869 p 125 § 473; 1854 p 203 § 383; RRS § 490.]

4.84.220 Bond in lieu of separate security. In lieu of separate security for each action or proceeding in any court, the plaintiff may cause to be executed and filed in the court a bond in the penal sum of two hundred dollars running to the state of Washington, with surety as in case of a separate bond, and conditioned for the payment of all judgments for costs which may thereafter be rendered against him or her in that court. Any defendant or garnishee who shall thereafter recover a judgment for costs in said court against the principal on such bond shall likewise be entitled to judgment against the sureties. Such bond shall not be sufficient unless the penalty thereof is unimpaired by any outstanding obligation at the time of the commencement of the action. [2011 c 336 § 129; 1929 c 103 § 2; RRS § 495-1.]

4.84.240 Judgment on cost bond. Whenever any bond or undertaking for the payment of any costs to any party shall be filed in any action or other legal proceeding in any court in this state and judgment should be rendered for any such costs against the principal on any such bonds or against the party primarily liable therefor in whose behalf any such bond or undertaking has been filed, such judgment for costs shall be rendered against the principal on such bond or the party primarily liable therefor and at the same time also against his or her surety or sureties on any or all such bonds or undertakings filed in any such action or other legal proceeding. [2011 c 336 § 130; 1909 c 173 § 1; RRS § 496.]

4.84.330 Actions on contract or lease which provides that attorneys' fees and costs incurred to enforce provisions be awarded to one of parties—Prevailing party entitled to attorney's fees—Waiver prohibited. In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

Attorneys' fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorneys' fees is void.

As used in this section "prevailing party" means the party in whose favor final judgment is rendered. [2011 c 336 § 131; 1977 ex.s. c 203 § 1.]

4.92.006 Definitions. As used in this chapter:

- (1) "Department" means the department of enterprise services.
- (2) "Director" means the director of enterprise services.
- (3) "Office of risk management" means the office within the department of enterprise services that carries out the powers and duties under this chapter relating to claim filing, claims administration, and claims payment.
- (4) "Risk manager" means the person supervising the office of risk management. [2011 1st sp.s. c 43 § 511; 2002 c 332 § 10; 1989 c 419 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

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

Intent—1989 c 419: "In recent years the state of Washington has experienced significant increases in public liability claims. It is the intent of the legislature to reduce tort claim costs by restructuring Washington state's risk management program to place more accountability in state agencies, to establish an actuarially sound funding mechanism for paying legitimate claims, when they occur, and to establish an effective safety and loss control program." [1989 c 419 § 1.]

Additional notes found at www.leg.wa.gov

4.92.040 Judgments—Claims to legislature against state—Payment procedure—Inapplicability to judgments and claims against housing finance commission.

- (1) No execution shall issue against the state on any judgment.
- (2) Whenever a final judgment against the state is obtained in an action on a claim arising out of tortious conduct, the claim shall be paid from the liability account.
- (3) Whenever a final judgment against the state shall have been obtained in any other action, the clerk of the court shall make and furnish to the office of risk management a duly certified copy of such judgment; the office of risk management shall thereupon audit the amount of damages and costs therein awarded, and the same shall be paid from appropriations specifically provided for such purposes by law.

(4) Final judgments for which there are no provisions in state law for payment shall be transmitted by the office of risk management to the senate and house of representatives committees on ways and means as follows:

- (a) On the first day of each session of the legislature, the office of risk management shall transmit judgments received and audited since the adjournment of the previous session of the legislature.

(b) During each session of legislature, the office of risk management shall transmit judgments immediately upon completion of audit.

(5) All claims, other than judgments, made to the legislature against the state of Washington for money or property, shall be accompanied by a statement of the facts on which such claim is based and such evidence as the claimant intends to offer in support of the claim and shall be filed with the office of risk management, which shall retain the same as a record. All claims of two thousand dollars or less shall be approved or rejected by the office of risk management, and if approved shall be paid from appropriations specifically provided for such purpose by law. Such decision, if adverse to the claimant in whole or part, shall not preclude the claimant from seeking relief from the legislature. If the claimant accepts any part of his or her claim which is approved for payment by the office of risk management, such acceptance shall constitute a waiver and release of the state from any further claims relating to the damage or injury asserted in the claim so accepted. The office of risk management shall submit to the house and senate committees on ways and means, at the beginning of each regular session, a comprehensive list of all claims paid pursuant to this subsection during the preceding year. For all claims not approved by the office of risk management, the office of risk management shall recommend to the legislature whether such claims should be approved or rejected. Recommendations shall be submitted to the senate and house of representatives committees on ways and means not later than the thirtieth day of each regular session of the legislature. Claims which cannot be processed for timely submission of recommendations shall be held for submission during the following regular session of the legislature. The recommendations shall include, but not be limited to:

(a) A summary of the facts alleged in the claim, and a statement as to whether these facts can be verified by the office of risk management;

(b) An estimate by the office of risk management of the value of the loss or damage which was alleged to have occurred;

(c) An analysis of the legal liability, if any, of the state for the alleged loss or damage; and

(d) A summary of equitable or public policy arguments which might be helpful in resolving the claim.

(6) The legislative committees to whom such claims are referred shall make a transcript, recording, or statement of the substance of the evidence given in support of such a claim. If the legislature approves a claim the same shall be paid from appropriations specifically provided for such purpose by law.

(7) Subsections (3) through (6) of this section do not apply to judgments or claims against the state housing finance commission created under chapter 43.180 RCW. [2011 1st sp.s. c 43 § 512; 2002 c 332 § 11; 1999 c 163 § 3; 1986 c 126 § 4; 1983 c 161 § 28; 1979 ex.s. c 167 § 1; 1979 c 151 § 2; 1977 ex.s. c 144 § 1; 1963 c 159 § 6; 1895 c 95 § 4; RRS § 889.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

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

Additional notes found at www.leg.wa.gov

4.92.130 Tortious conduct of state—Liability account—Purpose. A liability account in the custody of the treasurer is hereby created as a nonappropriated account to be used solely and exclusively for the payment of liability settlements and judgments against the state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of its officers, employees, and volunteers and all related legal defense costs.

(1) The purpose of the liability account is to: (a) Expediently pay legal liabilities and defense costs of the state resulting from tortious conduct; (b) promote risk control through a cost allocation system which recognizes agency loss experience, levels of self-retention, and levels of risk exposure; and (c) establish an actuarially sound system to pay incurred losses, within defined limits.

(2) The liability account shall be used to pay claims for injury and property damages and legal defense costs exclusive of agency-retained expenses otherwise budgeted.

(3) No money shall be paid from the liability account, except for defense costs, unless all proceeds available to the claimant from any valid and collectible liability insurance shall have been exhausted and unless:

(a) The claim shall have been reduced to final judgment in a court of competent jurisdiction; or

(b) The claim has been approved for payment.

(4) The liability account shall be financed through annual premiums assessed to state agencies, based on sound actuarial principles, and shall be for liability coverage in excess of agency-budgeted self-retention levels.

(5) Annual premium levels shall be determined by the risk manager. An actuarial study shall be conducted to assist in determining the appropriate level of funding.

(6) Disbursements for claims from the liability account shall be made to the claimant, or to the clerk of the court for judgments, upon written request to the state treasurer from the risk manager.

(7) The director may direct agencies to transfer moneys from other funds and accounts to the liability account if premiums are delinquent.

(8) The liability account shall not exceed fifty percent of the actuarial value of the outstanding liability as determined annually by the office of risk management. If the account exceeds the maximum amount specified in this section, premiums may be adjusted by the office of risk management in order to maintain the account balance at the maximum limits. If, after adjustment of premiums, the account balance remains above the limits specified, the excess amount shall be prorated back to the appropriate funds. [2011 1st sp.s. c 43 § 513; 2009 c 560 § 15; 2002 c 332 § 14; 1999 c 163 § 1; 1991 sp.s. c 13 § 92; 1989 c 419 § 4; 1985 c 217 § 3; 1975 1st ex.s. c 126 § 3; 1969 c 140 § 1; 1963 c 159 § 7.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

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

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

Actions against regents, trustees, etc., of institutions of higher education or educational boards, payments of obligations from liability account: RCW 28B.10.842.

Department of enterprise services to conduct actuarial studies: RCW 43.19.778.

Additional notes found at www.leg.wa.gov

4.92.150 Compromise and settlement of claims by attorney general. After commencement of an action in a court of competent jurisdiction upon a claim against the state, or any of its officers, employees, or volunteers arising out of tortious conduct or pursuant to 42 U.S.C. Sec. 1981 et seq., or against a foster parent that the attorney general is defending pursuant to RCW 4.92.070, or upon petition by the state, the attorney general, with the prior approval of the office of risk management and with the approval of the court, following such testimony as the court may require, may compromise and settle the same and stipulate for judgment against the state, the affected officer, employee, volunteer, or foster parent. [2011 1st sp.s. c 43 § 514; 2002 c 332 § 15; 1989 c 403 § 4. Prior: 1985 c 217 § 5; 1985 c 188 § 9; 1979 ex.s. c 144 § 2; 1975 1st ex.s. c 126 § 5; 1963 c 159 § 9.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

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

Findings—1989 c 403: See note following RCW 4.92.060.

4.92.160 Payment of claims and judgments. Payment of claims and judgments arising out of tortious conduct or pursuant to 42 U.S.C. Sec. 1981 et seq. shall not be made by any agency or department of state government with the exception of the office of risk management, and that office shall authorize and direct the payment of moneys only from the liability account whenever:

(1) The head or governing body of any agency or department of state or the designee of any such agency certifies to the office of risk management that a claim has been settled; or

(2) The clerk of court has made and forwarded a certified copy of a final judgment in a court of competent jurisdiction and the attorney general certifies that the judgment is final and was entered in an action on a claim arising out of tortious conduct or under and pursuant to 42 U.S.C. Sec. 1981 et seq. Payment of a judgment shall be made to the clerk of the court for the benefit of the judgment creditors. Upon receipt of payment, the clerk shall satisfy the judgment against the state. [2011 1st sp.s. c 43 § 515; 2002 c 332 § 16; 1999 c 163 § 4; 1991 c 187 § 3; 1986 c 126 § 9; 1979 ex.s. c 144 § 3; 1979 c 151 § 5; 1975 1st ex.s. c 126 § 6; 1969 c 140 § 2; 1963 c 159 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

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

Intent—1991 c 187: "It is the intent of the legislature that the tort claims revolving fund created under section 1 of this act have [has] the same purpose, use, and application as the tort claims revolving fund abolished effective July 1, 1989, by the legislature in chapter 419, Laws of 1989." [1991 c 187 § 2.]

Duty of clerk to forward copy of judgment: RCW 4.92.040.

Additional notes found at www.leg.wa.gov

4.92.180 State, local governments not liable for injury to unauthorized third-party occupant of state or local government vehicle. (1) The state and local govern-

ments are not liable for any injury received by a third-party occupant of a vehicle that is owned, leased, or rented by the state or local government if, at the time the injuries were inflicted, the third-party occupant was:

(a) Riding in or on the vehicle with a state or local government employee who had explicitly acknowledged in writing the employer's policy on use of vehicles owned, leased, or rented by the state or local government; and

(b) Not specifically and expressly authorized by the state or local government to be an occupant of the vehicle.

(2) For purposes of this section, "third-party occupant" means a person who occupies a vehicle owned, leased, or rented by the state or local government and who is not an officer, employee, or agent of the state or local government. "Local government" includes any city, county, or other subdivision of the state and any municipal corporation, quasi-municipal corporation, or special district within the state. [2011 c 82 § 2.]

Intent—2011 c 82: "The legislature intends to overrule the state supreme court's holding in *Rahman v. State*, No. 83428-8 (January 20, 2011), by modifying the application of the common law doctrine of respondeat superior." [2011 c 82 § 1.]

Application—2011 c 82: "This act applies to all causes of action accruing on or after July 22, 2011." [2011 c 82 § 4.]

4.92.210 Risk management—Review of claims—Settlements. (1) All liability claims arising out of tortious conduct or under 42 U.S.C. Sec. 1981 et seq. that the state of Washington or any of its officers, employees, or volunteers would be liable for shall be filed with the office of risk management.

(2) A centralized claim tracking system shall be maintained to provide agencies with accurate and timely data on the status of liability claims. Information in this claim file, other than the claim itself, shall be privileged and confidential.

(3) Standardized procedures shall be established for filing, reporting, processing, and adjusting claims, which includes the use of qualified claims management personnel.

(4) All claims shall be reviewed by the office of risk management to determine an initial valuation, to delegate to the appropriate office to investigate, negotiate, compromise, and settle the claim, or to retain that responsibility on behalf of and with the assistance of the affected state agency.

(5) All claims that result in a lawsuit shall be forwarded to the attorney general's office. Thereafter the attorney general and the office of risk management shall collaborate in the investigation, denial, or settlement of the claim.

(6) Reserves shall be established for recognizing financial liability and monitoring effectiveness. The valuation of specific claims against the state shall be privileged and confidential.

(7) All settlements shall be approved by the responsible agencies, or their designees, prior to settlement. [2011 1st sp.s. c 43 § 516; 2002 c 332 § 17; 1989 c 419 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

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

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

4.92.270 Risk management—Standard indemnification agreements. The risk manager shall develop procedures for standard indemnification agreements for state agencies to use whenever the agency agrees to indemnify, or be indemnified by, any person or party. The risk manager shall also develop guidelines for the use of indemnification agreements by state agencies. On request of the risk manager, an agency shall forward to the office of risk management for review and approval any contract or agreement containing an indemnification agreement. [2011 1st sp.s. c 43 § 517; 2002 c 332 § 21; 1989 c 419 § 15.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

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

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

4.92.280 Local government reimbursement claims. If chapter 217, Laws of 1998 mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the department of enterprise services. [2011 1st sp.s. c 43 § 518; 1998 c 217 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 4.96 RCW

ACTIONS AGAINST POLITICAL SUBDIVISIONS, MUNICIPAL AND QUASI-MUNICIPAL CORPORATIONS

Sections

4.96.010 Tortious conduct of local governmental entities—Liability for damages.

4.96.010 Tortious conduct of local governmental entities—Liability for damages. (1) All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

(2) Unless the context clearly requires otherwise, for the purposes of this chapter, "local governmental entity" means a county, city, town, special district, municipal corporation as defined in RCW 39.50.010, quasi-municipal corporation, any joint municipal utility services authority, any entity created by public agencies under RCW 39.34.030, or public hospital.

(3) For the purposes of this chapter, "volunteer" is defined according to RCW 51.12.035. [2011 c 258 § 10; 2001 c 119 § 1; 1993 c 449 § 2; 1967 c 164 § 1.]

Short title—Purpose—Intent—2011 c 258: See RCW 39.106.010.

[2011 RCW Supp—page 36]

Purpose—1993 c 449: "This act is designed to provide a single, uniform procedure for bringing a claim for damages against a local governmental entity. The existing procedures, contained in chapter 36.45 RCW, counties, chapter 35.31 RCW, cities and towns, chapter 35A.31 RCW, optional municipal code, and chapter 4.96 RCW, other political subdivisions, municipal corporations, and quasi-municipal corporations, are revised and consolidated into chapter 4.96 RCW." [1993 c 449 § 1.]

Purpose—1967 c 164: "It is the purpose of this act to extend the doctrine established in chapter 136, Laws of 1961, as amended, to all political subdivisions, municipal corporations and quasi municipal corporations of the state." [1967 c 164 § 17.]

Additional notes found at www.leg.wa.gov

Title 5

EVIDENCE

Chapters

- 5.28 Oaths and affirmations.**
- 5.40 Proof—General provisions.**
- 5.48 Proof—Replacement of lost records.**
- 5.50 Uniform unsworn foreign declarations act.**
- 5.52 Telegraphic communications.**
- 5.56 Witnesses—Compelling attendance.**

Chapter 5.28 RCW

OATHS AND AFFIRMATIONS

Sections

- 5.28.020 How administered.
- 5.28.030 Form may be varied.
- 5.28.040 Form may be adapted to religious belief.
- 5.28.050 Form of affirmation.

5.28.020 How administered. An oath may be administered as follows: The person who swears holds up his or her hand, while the person administering the oath thus addresses him or her: "You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between and shall be the truth, the whole truth, and nothing but the truth, so help you God." If the oath be administered to any other than a witness giving testimony, the form may be changed to: "You do solemnly swear you will true answers make to such questions as you may be asked," etc. [2011 c 336 § 132; 2 H. C. § 1694; 1869 p 378 § 2; RRS § 1265.]

5.28.030 Form may be varied. Whenever the court or officer before which a person is offered as a witness is satisfied that he or she has a peculiar mode of swearing connected with or in addition to the usual form of administration, which, in witness' opinion, is more solemn or obligatory, the court or officer may, in its discretion, adopt that mode. [2011 c 336 § 133; 2 H. C. § 1695; 1869 p 379 § 3; RRS § 1266.]

5.28.040 Form may be adapted to religious belief. When a person is sworn who believes in any other than the Christian religion, he or she may be sworn according to the peculiar ceremonies of his or her religion, if there be any such. [2011 c 336 § 134; 2 H. C. § 1696; 1869 p 379 § 4; RRS § 1267.]

5.28.050 Form of affirmation. Any person who has conscientious scruples against taking an oath, may make his or her solemn affirmation, by assenting, when addressed, in the following manner: "You do solemnly affirm that," etc., as in RCW 5.28.020. [2011 c 336 § 135; 2 H. C. § 1697; 1869 p 379 § 5; RRS § 1268.]

Chapter 5.40 RCW

PROOF—GENERAL PROVISIONS

Sections

- 5.40.020 Written finding of presumed death as prima facie evidence.
- 5.40.040 Proof of authenticity of signature to report or of certification.

5.40.020 Written finding of presumed death as prima facie evidence. A written finding of presumed death, made by the secretary of war, the secretary of the navy, or other officer or employee of the United States authorized to make such finding, pursuant to the federal missing persons act (56 Stat. 143, 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; U.S.C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office, or other place in this state as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances, and place of his or her disappearance. [2011 c 336 § 136; 1945 c 101 § 1; Rem. Supp. 1945 § 1257-1.]

Additional notes found at www.leg.wa.gov

5.40.040 Proof of authenticity of signature to report or of certification. For the purposes of RCW 5.40.020 and 5.40.030 any finding, report or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said sections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his or her authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his or her authority so to certify. [2011 c 336 § 137; 1945 c 101 § 3; Rem. Supp. 1945 § 1257-3.]

Chapter 5.48 RCW

PROOF—REPLACEMENT OF LOST RECORDS

Sections

- 5.48.060 Replacement of lost or destroyed probate records.

5.48.060 Replacement of lost or destroyed probate records. In case of the loss or destruction by fire or otherwise of the records, or any part thereof, of any probate court or superior court having probate jurisdiction, the judge of any such court may proceed, upon its own motion, or upon application in writing of any party in interest, to restore the records, papers, and proceedings of either of said courts relating to the estates of deceased persons, including recorded wills, wills probated, or filed for probate in such courts, all marriage records and all other records and proceedings, and for the purpose of restoring said records, wills, papers, or pro-

ceedings, or any part thereof, may cause citations or other process to be issued to any and all parties to be designated by him or her, and may compel the attendance in court of any and all witnesses whose testimony may be necessary to the establishment of any such record or part thereof, and the production of any and all written or documentary evidence which may be by him or her deemed necessary in determining the true import and effect of the original records, will, paper, or other document belonging to the files of said courts; and may make such orders and decrees establishing such original record, will, paper, document or proceeding, or the substance thereof, as to him or her shall seem just and proper. [2011 c 336 § 138; 1957 c 9 § 5; 1890 p 340 § 7; RRS § 1276.]

Reviser's note: Jurisdiction in probate matters now vested in superior courts, see state Constitution Art. 4 § 6 (Amendment 28) and Art. 27 § 10.

Chapter 5.50 RCW

UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

Sections

- 5.50.010 Definitions.
- 5.50.020 Applicability.
- 5.50.030 Validity of unsworn declaration—Exceptions.
- 5.50.040 Medium required for presentation of unsworn declaration.
- 5.50.050 Form.
- 5.50.060 Relation to electronic signatures in global and national commerce act.
- 5.50.900 Short title.
- 5.50.901 Uniformity of application and construction—2011 c 22.

5.50.010 Definitions. In this chapter:

- (1) "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.
- (2) "Law" includes the federal or a state Constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.
- (3) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (4) "Sign" means, with present intent to authenticate or adopt a record:
 - (a) To execute or adopt a tangible symbol; or
 - (b) To attach to or logically associate with the record an electronic symbol, sound, or process.
- (5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (6) "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.
- (7) "Unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury. [2011 c 22 § 2.]

5.50.020 Applicability. This chapter applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of

the United States whether or not the location is subject to the jurisdiction of the United States. This chapter does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe. [2011 c 22 § 3.]

5.50.030 Validity of unsworn declaration—Exceptions. (1) Except as otherwise provided in subsection (2) of this section, if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this chapter has the same effect as a sworn declaration.

(2) This chapter does not apply to:

- (a) A deposition;
- (b) An oath of office;
- (c) An oath required to be given before a specified official other than a notary public;
- (d) A declaration to be recorded pursuant to Title 64 or 65 RCW; or
- (e) An oath required by RCW 11.20.020. [2011 c 22 § 4.]

5.50.040 Medium required for presentation of unsworn declaration. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium. [2011 c 22 § 5.]

5.50.050 Form. An unsworn declaration under this chapter must be in substantially the following form:

I declare under penalty of perjury under the law of Washington that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the day of,
 (date) (month) (year)

at,
 (city or other location, and state) (country)

.
 (printed name)

.
 (signature)

[2011 c 22 § 6.]

5.50.060 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2011 c 22 § 8.]

5.50.900 Short title. This chapter may be cited as the uniform unsworn foreign declarations act. [2011 c 22 § 1.]

5.50.901 Uniformity of application and construction—2011 c 22. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2011 c 22 § 7.]

Chapter 5.52 RCW

TELEGRAPHIC COMMUNICATIONS

Sections

- 5.52.010 Deemed communications in writing.
- 5.52.020 Notice by telegraph deemed actual notice.

5.52.010 Deemed communications in writing. Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph and signed by the person or persons sending the same, or by his, her, or their authority, shall be held and deemed to be communications in writing. [2011 c 336 § 139; Code 1881 § 2352; 1865 p 74 § 11; RRS § 11345.]

5.52.020 Notice by telegraph deemed actual notice. Whenever any notice, information, or intelligence, written or otherwise, is required to be given, the same may be given by telegraph: PROVIDED, That the dispatch containing the same be delivered to the person entitled thereto, or to his or her agent or attorney. Notice by telegraph shall be deemed actual notice. [2011 c 336 § 140; Code 1881 § 2353; 1865 p 74 § 12; RRS § 11346.]

Chapter 5.56 RCW

WITNESSES—COMPELLING ATTENDANCE

Sections

- 5.56.010 When witnesses must attend—Fees and allowances.
- 5.56.050 Person in court required to testify.
- 5.56.060 Result of failure to attend.
- 5.56.090 Testimony of prisoner, how obtained.

5.56.010 When witnesses must attend—Fees and allowances. Any person may be compelled to attend as a witness before any court of record, judge, commissioner, or referee, in any civil action or proceeding in this state. No such person shall be compelled to attend as a witness in any civil action or proceeding unless the fees be paid or tendered him or her which are allowed by law for one day's attendance as a witness and for traveling to and returning from the place where he or she is required to attend, together with any allowance for meals and lodging theretofore fixed as specified herein: PROVIDED, That such fees be demanded by any witness residing within the same county where such court of record, judge, commissioner, or referee is located, or within twenty miles of the place where such court is located, at the time of service of the subpoena: PROVIDED FURTHER, That a party desiring the attendance of a witness residing outside of the county in which such action or proceeding is pending, or more than twenty miles of the place where such court is located, shall apply ex parte to such court, or to the judge,

commissioner, referee, or clerk thereof, who, if such application be granted and a subpoena issued, shall fix without notice an allowance for meals and lodging, if any to be allowed, together with necessary travel expenses, and the amounts so fixed shall be endorsed upon the subpoena and tendered to such witness at the time of the service of the subpoena: PROVIDED FURTHER, That the court shall fix and allow at or after trial such additional amounts for meals, lodging, and travel as it may deem reasonable for the attendance of such witness. [2011 c 336 § 141; 1963 c 19 § 1; 1891 c 19 § 2; Code 1881 § 393; 1877 p 87 § 395; 1869 p 104 § 388; 1863 p 156 § 69; 1854 p 187 § 295; RRS § 1215.]

Rules of court: Cf. CR 4(f).

District court, attachment, damages for nonappearance: RCW 12.16.030, 12.16.050.

Power to compel attendance of persons to testify: RCW 2.28.010, 2.28.020, 2.28.060, 2.28.070.

Salaries public officers shall not receive additional compensation as witness on behalf of employer, and in certain other cases: RCW 42.16.020.

Witness fees and mileage: Chapter 2.40 RCW.

5.56.050 Person in court required to testify. A person present in court or before a judicial officer, may be required to testify in the same manner as if he or she were in attendance upon a subpoena issued by such court or officer. [2011 c 336 § 142; Code 1881 § 397; 1877 p 88 § 399; 1869 p 106 § 392; 1854 p 188 § 299; RRS § 1219.]

5.56.060 Result of failure to attend. If any person duly served with a subpoena and obliged to attend as a witness, shall fail to do so, without any reasonable excuse, he or she shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action. [2011 c 336 § 143; Code 1881 § 398; 1877 p 88 § 400; 1869 p 106 § 393; 1854 p 188 § 300; RRS § 1220, part. FORMER PART OF SECTION: Code 1881 § 399; 1877 p 88 § 401; 1869 p 106 § 394; 1854 p 188 § 301; RRS § 1220, part, now codified as RCW 5.56.061.]

Contempts: Chapter 7.21 RCW.

District court, damages for nonappearance: RCW 12.16.050.

5.56.090 Testimony of prisoner, how obtained. If the witness be a prisoner confined in a jail or prison within this state, an order for his or her examination in prison, upon deposition, or for his or her temporary removal and production before a court or officer, for the purpose of being orally examined, may be issued. [2011 c 336 § 144; Code 1881 § 401; 1877 p 88 § 403; 1869 p 106 § 396; 1854 p 189 § 303; RRS § 1223.]

Title 6

ENFORCEMENT OF JUDGMENTS

Chapters

- 6.15** Personal property exemptions.
- 6.23** Redemption.
- 6.25** Attachment.
- 6.27** Garnishment.
- 6.32** Proceedings supplemental to execution.
- 6.36** Uniform enforcement of foreign judgments act.

Chapter 6.15 RCW

PERSONAL PROPERTY EXEMPTIONS

Sections

- 6.15.010 Exempt property.
- 6.15.020 Pension money exempt—Exceptions—Transfer of spouse's interest in employee benefit plan.

6.15.010 Exempt property. (1) Except as provided in RCW 6.15.050, the following personal property is exempt from execution, attachment, and garnishment:

(a) All wearing apparel of every individual and family, but not to exceed three thousand five hundred dollars in value in furs, jewelry, and personal ornaments for any individual.

(b) All private libraries including electronic media, which includes audio-visual, entertainment, or reference media in digital or analogue format, of every individual, but not to exceed three thousand five hundred dollars in value, and all family pictures and keepsakes.

(c) To each individual or, as to community property of spouses maintaining a single household as against a creditor of the community, to the community:

(i) The individual's or community's household goods, appliances, furniture, and home and yard equipment, not to exceed six thousand five hundred dollars in value for the individual or thirteen thousand dollars for the community, no single item to exceed seven hundred fifty dollars, said amount to include provisions and fuel for the comfortable maintenance of the individual or community;

(ii) Other personal property, except personal earnings as provided under RCW 6.15.050(1), not to exceed three thousand dollars in value, of which not more than one thousand five hundred dollars in value may consist of cash, and of which not more than:

(A) Until January 1, 2018:

(I) For debts owed to state agencies, two hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities. The maximum exemption under (c)(ii)(A) of this subsection may not exceed two hundred dollars, regardless of the number of existing separate bank accounts, savings and loan accounts, stocks, bonds, or other securities.

(II) For all other debts, five hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities. The maximum exemption under (c)(ii)(B) of this subsection may not exceed five hundred dollars, regardless of the number of existing separate bank accounts, savings and loan accounts, stocks, bonds, or other securities.

(B) After January 1, 2018: For all debts, five hundred dollars in value may consist of bank accounts, savings and loan accounts, stocks, bonds, or other securities. The maximum exemption under this subsection (1)(c)(ii)(B) may not exceed five hundred dollars, regardless of the number of existing separate bank accounts, savings and loan accounts, stocks, bonds, or other securities;

(iii) For an individual, a motor vehicle used for personal transportation, not to exceed three thousand two hundred fifty dollars or for a community two motor vehicles used for personal transportation, not to exceed six thousand five hundred dollars in aggregate value;

(iv) Any past due, current, or future child support paid or owed to the debtor, which can be traced;

(v) All professionally prescribed health aids for the debtor or a dependent of the debtor; and

(vi) To any individual, the right to or proceeds of a payment not to exceed twenty thousand dollars on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or the right to or proceeds of a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. The exemption under this subsection (1)(c)(vi) does not apply to the right of the state of Washington, or any agent or assignee of the state, as a lienholder or subrogee under RCW 43.20B.060.

(d) To each qualified individual, one of the following exemptions:

(i) To a farmer, farm trucks, farm stock, farm tools, farm equipment, supplies and seed, not to exceed ten thousand dollars in value;

(ii) To a physician, surgeon, attorney, clergyman, or other professional person, the individual's library, office furniture, office equipment and supplies, not to exceed ten thousand dollars in value;

(iii) To any other individual, the tools and instruments and materials used to carry on his or her trade for the support of himself or herself or family, not to exceed ten thousand dollars in value.

(e) Tuition units, under chapter 28B.95 RCW, purchased more than two years prior to the date of a bankruptcy filing or court judgment, and contributions to any other qualified tuition program under 26 U.S.C. Sec. 529 of the internal revenue code of 1986, as amended, and to a Coverdell education savings account, also known as an education individual retirement account, under 26 U.S.C. Sec. 530 of the internal revenue code of 1986, as amended, contributed more than two years prior to the date of a bankruptcy filing or court judgment.

(2) For purposes of this section, "value" means the reasonable market value of the debtor's interest in an article or item at the time it is selected for exemption, exclusive of all liens and encumbrances thereon. [2011 c 162 § 2; 2005 c 272 § 6; 2002 c 265 § 1; 1991 c 112 § 1; 1988 c 231 § 5; 1987 c 442 § 301; 1983 1st ex.s. c 45 § 8; 1979 ex.s. c 65 § 1; 1973 1st ex.s. c 154 § 13; 1965 c 89 § 1; 1886 p 96 § 1; Code 1881 § 347; 1879 p 157 § 1; 1877 p 73 § 351; 1869 p 87 § 343; 1854 p 178 § 253; RRS § 563. Formerly RCW 6.16.020.]

Additional notes found at www.leg.wa.gov

6.15.020 Pension money exempt—Exceptions—

Transfer of spouse's interest in employee benefit plan. (1) It is the policy of the state of Washington to ensure the well-being of its citizens by protecting retirement income to which they are or may become entitled. For that purpose generally and pursuant to the authority granted to the state of Washington under 11 U.S.C. Sec. 522(b)(2), the exemptions in this section relating to retirement benefits are provided.

(2) Unless otherwise provided by federal law, any money received by any citizen of the state of Washington as a pension from the government of the United States, whether the same be in the actual possession of such person or be deposited or loaned, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever, and when a debtor dies, or absconds, and leaves his or her family any money exempted by this subsection, the same shall be exempt to the family as provided in this subsection. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law.

(3) The right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Washington under any employee benefit plan, and any fund created by such a plan or arrangement, shall be exempt from execution, attachment, garnishment, or seizure by or under any legal process whatever. This subsection shall not apply to child support collection actions issued under chapter 26.18, 26.23, or 74.20A RCW if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support. This subsection does not prohibit actions against an employee benefit plan, or fund for valid obligations incurred by the plan or fund for the benefit of the plan or fund.

(4) For the purposes of this section, the term "employee benefit plan" means any plan or arrangement that is described in RCW 49.64.020, including any Keogh plan, whether funded by a trust or by an annuity contract, and in 26 U.S.C. Sec. 401(a) or 403(a) of the internal revenue code of 1986, as amended; or that is a tax-sheltered annuity or a custodial account described in section 403(b) of such code or an individual retirement account or an individual retirement annuity described in section 408 of such code; or a Roth individual retirement account described in section 408A of such code; or a medical savings account or a health savings account described in sections 220 and 223, respectively, of such code; or a retirement bond described in section 409 of such code as in effect before January 1, 1984. The term "employee benefit plan" shall not include any employee benefit plan that is established or maintained for its employees by the government of the United States, by the state of Washington under chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW or RCW 41.50.770, or by any agency or instrumentality of the government of the United States.

(5) An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement. This subsection shall not apply to child support

collection actions issued under chapter 26.18, 26.23, or 74.20A RCW, if otherwise permitted by federal law. This subsection shall permit benefits under any such plan or arrangement to be payable to a spouse, former spouse, child, or other dependent of a participant in such plan to the extent expressly provided for in a qualified domestic relations order that meets the requirements for such orders under the plan, or, in the case of benefits payable under a plan described in 26 U.S.C. Sec. 403(b) or 408 of the internal revenue code of 1986, as amended, or section 409 of such code as in effect before January 1, 1984, to the extent provided in any order issued by a court of competent jurisdiction that provides for maintenance or support.

(6) Unless prohibited by federal law, nothing contained in subsection (3), (4), or (5) of this section shall be construed as a termination or limitation of a spouse's community property interest in an employee benefit plan held in the name of or on account of the other spouse, who is the participant or the account holder spouse. Unless prohibited by applicable federal law, at the death of the nonparticipant, nonaccount holder spouse, the nonparticipant, nonaccount holder spouse may transfer or distribute the community property interest of the nonparticipant, nonaccount holder spouse in the participant or account holder spouse's employee benefit plan to the nonparticipant, nonaccount holder spouse's estate, testamentary trust, inter vivos trust, or other successor or successors pursuant to the last will of the nonparticipant, nonaccount holder spouse or the law of intestate succession, and that distributee may, but shall not be required to, obtain an order of a court of competent jurisdiction, including a nonjudicial binding agreement or order entered under chapter 11.96A RCW, to confirm the distribution. For purposes of subsection (3) of this section, the distributee of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan shall be considered a person entitled to the full protection of subsection (3) of this section. The nonparticipant, nonaccount holder spouse's consent to a beneficiary designation by the participant or account holder spouse with respect to an employee benefit plan shall not, absent clear and convincing evidence to the contrary, be deemed a release, gift, relinquishment, termination, limitation, or transfer of the nonparticipant, nonaccount holder spouse's community property interest in an employee benefit plan. For purposes of this subsection, the term "nonparticipant, nonaccount holder spouse" means the spouse of the person who is a participant in an employee benefit plan or in whose name an individual retirement account is maintained. As used in this subsection, an order of a court of competent jurisdiction entered under chapter 11.96A RCW includes an agreement, as that term is used under RCW 11.96A.220. [2011 c 162 § 3; 2007 c 492 § 1. Prior: 1999 c 81 § 1; 1999 c 42 § 603; 1997 c 20 § 1; 1990 c 237 § 1; 1989 c 360 § 21; 1988 c 231 § 6; prior: 1987 c 64 § 1; 1890 p 88 § 1; RRS § 566. Formerly RCW 6.16.030.]

Additional notes found at www.leg.wa.gov

Chapter 6.23 RCW

REDEMPTION

Sections

6.23.040	Time for redemption from redemptioner—Successive redemptions—Amount to be paid.
6.23.110	Possession during period of redemption.

6.23.040 Time for redemption from redemptioner—Successive redemptions—Amount to be paid. (1) If property is redeemed from the purchaser by a redemptioner, as provided in RCW 6.23.020, another redemptioner may, within sixty days after the first redemption, redeem it from the first redemptioner. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, and such sixty-day redemption periods may extend beyond the period prescribed in RCW 6.23.020 for redemption from the purchaser.

(2) The judgment debtor may also redeem from a redemptioner, but in all cases the judgment debtor shall have the entire redemption period prescribed by RCW 6.23.020, but no longer unless the time is extended under RCW 6.23.030 or 6.23.090. If the judgment debtor redeems, the effect of the sale is terminated and the estate of the debtor is restored.

(3) A redemptioner may redeem under this section by paying the sum paid on the last previous redemption with interest at the rate of eight percent per annum, and the amount of any assessments or taxes which the last previous redemptioner paid on the property after redeeming, with like interest, and the amount of any liens by judgment, decree, deed of trust, or mortgage, other than the judgment under which the property was sold, held by the last redemptioner, prior to his or her own, with interest. A judgment debtor who redeems from a redemptioner under this section must make the same payments as are required to effect a redemption by a redemptioner, including any lien by judgment, decree, deed of trust, or mortgage, other than the judgment under which the property was sold, held by the redemptioner. A redemptioner who pays any taxes or assessments, or has or acquires any such lien as herein mentioned, must file a statement as required under RCW 6.23.050. [2011 c 336 § 145; 1987 c 442 § 704; 1899 c 53 § 9; RRS § 596. Formerly RCW 6.24.150.]

6.23.110 Possession during period of redemption. (1) Except as provided in this section and RCW 6.23.090, the purchaser from the day of sale until a resale or redemption, and the redemptioner from the day of redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the period of redemption.

(2) If a mortgage contains a stipulation that in case of foreclosure the mortgagor may remain in possession of the mortgaged premises after sale and until the period of redemption has expired, the court shall make its decree to that effect and the mortgagor shall have such right.

(3) As to any land so sold which is at the time of the sale used for farming purposes, or which is a part of a farm used, at the time of sale, for farming purposes, the judgment debtor shall be entitled to retain possession thereof during the period of redemption and the purchaser or his or her successor in interest shall, if the judgment debtor does not redeem, have a lien upon the crops raised or harvested thereon during said period of redemption, for interest on the purchase price at the rate of six percent per annum during said period of redemption and for taxes becoming delinquent during the period of redemption together with interest thereon.

(4) In case of any homestead as defined in chapter 6.13 RCW and occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or for value of occupation. [2011 c 336 § 146; 1987 c 442 § 711; 1981 c 329 § 21; 1961 c 196 § 3; 1957 c 8 § 6; 1939 c 94 § 1; 1927 c 93 § 1; 1899 c 53 § 15; RRS § 602. Formerly RCW 6.24.210.]

Additional notes found at www.leg.wa.gov

Chapter 6.25 RCW ATTACHMENT

Sections

6.25.030	Issuance of writ—Grounds.
6.25.040	Grounds if debt not due.

6.25.030 Issuance of writ—Grounds. The writ of attachment may be issued by the court in which the action is pending on one or more of the following grounds:

- (1) That the defendant is a foreign corporation; or
- (2) That the defendant is not a resident of this state; or
- (3) That the defendant conceals himself or herself so that the ordinary process of law cannot be served upon him or her; or

(4) That the defendant has absconded or absented himself or herself from his or her usual place of abode in this state, so that the ordinary process of law cannot be served upon him or her; or

(5) That the defendant has removed or is about to remove any of his or her property from this state, with intent to delay or defraud his or her creditors; or

(6) That the defendant has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of his or her property, with intent to delay or defraud his or her creditors; or

(7) That the defendant is about to convert his or her property, or a part thereof, into money, for the purpose of placing it beyond the reach of his or her creditors; or

(8) That the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or

(9) That the damages for which the action is brought are for injuries arising from the commission of some felony, gross misdemeanor, or misdemeanor; or

(10) That the object for which the action is brought is to recover on a contract, express or implied. [2011 c 336 § 147; 1987 c 442 § 803; 1973 1st ex.s. c 154 § 16; 1923 c 159 § 1; 1886 p 39 § 2; RRS § 648. Prior: Code 1881 §§ 174-192;

[2011 RCW Supp—page 42]

1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.020.]

Rules of court: *CR 64.*

Additional notes found at www.leg.wa.gov

6.25.040 Grounds if debt not due. An action may be commenced and the property of a debtor may be attached previous to the time when the debt becomes due, when nothing but time is wanting to fix an absolute indebtedness, and when the complaint and the affidavit allege, in addition to that fact, one or more of the following grounds:

(1) That the defendant is about to dispose or has disposed of his or her property in whole or in part with intent to defraud his or her creditors; or

(2) That the defendant is about to remove from the state and refuses to make any arrangements for securing the payment of the debt when it falls due, and the contemplated removal was not known to the plaintiff at the time the debt was contracted; or

(3) That the debt was incurred for property obtained under false pretenses. [2011 c 336 § 148; 1987 c 442 § 804; 1886 p 39 § 3; RRS § 649. Prior: Code 1881 §§ 174-192; 1877 pp 35-40; 1873 pp 43-50; 1871 pp 9, 10; 1869 pp 41-47; 1863 pp 112-120; 1860 pp 30-36; 1854 pp 155-162. Formerly RCW 7.12.030.]

Rules of court: *Cf. CR 64.*

Chapter 6.27 RCW GARNISHMENT

Sections

6.27.140	Form of returns under RCW 6.27.130. (<i>Effective until January 1, 2018.</i>)
6.27.140	Form of returns under RCW 6.27.130. (<i>Effective January 1, 2018.</i>)

6.27.140 Form of returns under RCW 6.27.130. (*Effective until January 1, 2018.*) (1) The notice required by RCW 6.27.130(1) to be mailed to or served on an individual judgment debtor shall be in the following form, printed or typed in type no smaller than elite type:

NOTICE OF GARNISHMENT AND OF YOUR RIGHTS

A Writ of Garnishment issued in a Washington court has been or will be served on the garnishee named in the attached copy of the writ. After receipt of the writ, the garnishee is required to withhold payment of any money that was due to you and to withhold any other property of yours that the garnishee held or controlled. This notice of your rights is required by law.

YOU HAVE THE FOLLOWING EXEMPTION RIGHTS:

WAGES. If the garnishee is your employer who owes wages or other personal earnings to you, your employer is required to pay amounts to you that are exempt under state and federal laws, as explained in the writ of garnishment. You should receive a copy

of your employer’s answer, which will show how the exempt amount was calculated. If the garnishment is for child support, the exempt amount paid to you will be forty percent of wages due you, but if you are supporting a spouse, state registered domestic partner, or dependent child, you are entitled to claim an additional ten percent as exempt.

BANK ACCOUNTS. If the garnishee is a bank or other institution with which you have an account in which you have deposited benefits such as Temporary Assistance for Needy Families, Supplemental Security Income (SSI), Social Security, veterans’ benefits, unemployment compensation, or a United States pension, you may claim the account as fully exempt if you have deposited only such benefit funds in the account. It may be partially exempt even though you have deposited money from other sources in the same account. An exemption is also available under RCW 26.16.200, providing that funds in a community bank account that can be identified as the earnings of a stepparent are exempt from a garnishment on the child support obligation of the parent.

OTHER EXEMPTIONS. If the garnishee holds other property of yours, some or all of it may be exempt under RCW 6.15.010, a Washington statute that exempts certain property of your choice (including money in a bank account up to \$200.00 for debts owed to state agencies, or up to \$500.00 for all other debts) and certain other property such as household furnishings, tools of trade, and a motor vehicle (all limited by differing dollar values).

HOW TO CLAIM EXEMPTIONS. Fill out the enclosed claim form and mail or deliver it as described in instructions on the claim form. If the plaintiff does not object to your claim, the funds or other property that you have claimed as exempt must be released not later than 10 days after the plaintiff receives your claim form. If the plaintiff objects, the law requires a hearing not later than 14 days after the plaintiff receives your claim form, and notice of the objection and hearing date will be mailed to you at the address that you put on the claim form.

THE LAW ALSO PROVIDES OTHER EXEMPTION RIGHTS. IF NECESSARY, AN ATTORNEY CAN ASSIST YOU TO ASSERT THESE AND OTHER RIGHTS, BUT YOU MUST ACT IMMEDIATELY TO AVOID LOSS OF RIGHTS BY DELAY.

(2) The claim form required by RCW 6.27.130(1) to be mailed to or served on an individual judgment debtor shall be in the following form, printed or typed in type no smaller than elite type:

[Caption to be filled in by judgment creditor or plaintiff before mailing.]

.....
Name of Court
..... No
Plaintiff,
vs.
..... EXEMPTION CLAIM
Defendant,
.....
Garnishee Defendant

INSTRUCTIONS:

- 1. Read this whole form after reading the enclosed notice. Then put an X in the box or boxes that describe your exemption claim or claims and write in the necessary information on the blank lines. If additional space is needed, use the bottom of the last page or attach another sheet.
- 2. Make two copies of the completed form. Deliver the original form by first-class mail or in person to the clerk of the court, whose address is shown at the bottom of the writ of garnishment. Deliver one of the copies by first-class mail or in person to the plaintiff or plaintiff’s attorney, whose name and address are shown at the bottom of the writ. Keep the other copy. **YOU SHOULD DO THIS AS QUICKLY AS POSSIBLE, BUT NO LATER THAN 28 DAYS (4 WEEKS) AFTER THE DATE ON THE WRIT.**

I/We claim the following money or property as exempt:

IF BANK ACCOUNT IS GARNISHED:

- The account contains payments from:
 - Temporary assistance for needy families, SSI, or other public assistance. I receive \$ monthly.
 - Social Security. I receive \$ monthly.
 - Veterans’ Benefits. I receive \$ monthly.
 - U.S. Government Pension. I receive \$ monthly.
 - Unemployment Compensation. I receive \$ monthly.
 - Child support. I receive \$ monthly.
 - Other. Explain

IF EXEMPTION IN BANK ACCOUNT IS CLAIMED, ANSWER ONE OR BOTH OF THE FOLLOWING:

- No money other than from above payments are in the account.
- Moneys in addition to the above payments have been deposited in the account. Explain

IF EARNINGS ARE GARNISHED FOR CHILD SUPPORT:

- I claim maximum exemption.
- I am supporting another child or other children.

[] I am supporting a husband, wife, or state registered domestic partner.

IF PENSION OR RETIREMENT BENEFITS ARE GARNISHED:

[] Name and address of employer who is paying the benefits:

OTHER PROPERTY:

[] Describe property (If you claim other personal property as exempt, you must attach a list of all other personal property that you own.)

Print: Your name If married or in a state registered domestic partnership, name of husband/wife/state registered domestic partner

Your signature Signature of husband, wife, or state registered domestic partner

Address Address (if different from yours)

Telephone number Telephone number (if different from yours)

CAUTION: If the plaintiff objects to your claim, you will have to go to court and give proof of your claim. For example, if you claim that a bank account is exempt, you may have to show the judge your bank statements and papers that show the source of the money you deposited in the bank. Your claim may be granted more quickly if you attach copies of such proof to your claim.

IF THE JUDGE DENIES YOUR EXEMPTION CLAIM, YOU WILL HAVE TO PAY THE PLAINTIFF'S COSTS. IF THE JUDGE DECIDES THAT YOU DID NOT MAKE THE CLAIM IN GOOD FAITH, HE OR SHE MAY DECIDE THAT YOU MUST PAY THE PLAINTIFF'S ATTORNEY FEES. [2011 c 162 § 5; 2010 1st sp.s. c 26 § 2; 2009 c 521 § 15; 2003 c 222 § 6; 1997 c 59 § 2; 1987 c 442 § 1014.]

6.27.140 Form of returns under RCW 6.27.130. (Effective January 1, 2018.) (1) The notice required by RCW 6.27.130(1) to be mailed to or served on an individual judgment debtor shall be in the following form, printed or typed in type no smaller than elite type:

NOTICE OF GARNISHMENT AND OF YOUR RIGHTS

A Writ of Garnishment issued in a Washington court has been or will be served on the garnishee named in the attached copy of the writ. After receipt

of the writ, the garnishee is required to withhold payment of any money that was due to you and to withhold any other property of yours that the garnishee held or controlled. This notice of your rights is required by law.

YOU HAVE THE FOLLOWING EXEMPTION RIGHTS:

WAGES. If the garnishee is your employer who owes wages or other personal earnings to you, your employer is required to pay amounts to you that are exempt under state and federal laws, as explained in the writ of garnishment. You should receive a copy of your employer's answer, which will show how the exempt amount was calculated. If the garnishment is for child support, the exempt amount paid to you will be forty percent of wages due you, but if you are supporting a spouse, state registered domestic partner, or dependent child, you are entitled to claim an additional ten percent as exempt.

BANK ACCOUNTS. If the garnishee is a bank or other institution with which you have an account in which you have deposited benefits such as Temporary Assistance for Needy Families, Supplemental Security Income (SSI), Social Security, veterans' benefits, unemployment compensation, or a United States pension, you may claim the account as fully exempt if you have deposited only such benefit funds in the account. It may be partially exempt even though you have deposited money from other sources in the same account. An exemption is also available under RCW 26.16.200, providing that funds in a community bank account that can be identified as the earnings of a stepparent are exempt from a garnishment on the child support obligation of the parent.

OTHER EXEMPTIONS. If the garnishee holds other property of yours, some or all of it may be exempt under RCW 6.15.010, a Washington statute that exempts certain property of your choice (including up to \$500.00 in a bank account) and certain other property such as household furnishings, tools of trade, and a motor vehicle (all limited by differing dollar values).

HOW TO CLAIM EXEMPTIONS. Fill out the enclosed claim form and mail or deliver it as described in instructions on the claim form. If the plaintiff does not object to your claim, the funds or other property that you have claimed as exempt must be released not later than 10 days after the plaintiff receives your claim form. If the plaintiff objects, the law requires a hearing not later than 14 days after the plaintiff receives your claim form, and notice of the objection and hearing date will be mailed to you at the address that you put on the claim form.

THE LAW ALSO PROVIDES OTHER EXEMPTION RIGHTS. IF NECESSARY, AN ATTOR-

NEY CAN ASSIST YOU TO ASSERT THESE AND OTHER RIGHTS, BUT YOU MUST ACT IMMEDIATELY TO AVOID LOSS OF RIGHTS BY DELAY.

(2) The claim form required by RCW 6.27.130(1) to be mailed to or served on an individual judgment debtor shall be in the following form, printed or typed in type no smaller than elite type:

[Caption to be filled in by judgment creditor or plaintiff before mailing.]

Name of Court

No

Plaintiff,

vs.

EXEMPTION CLAIM

Defendant,

Garnishee Defendant

INSTRUCTIONS:

- 1. Read this whole form after reading the enclosed notice. Then put an X in the box or boxes that describe your exemption claim or claims and write in the necessary information on the blank lines. If additional space is needed, use the bottom of the last page or attach another sheet.
2. Make two copies of the completed form. Deliver the original form by first-class mail or in person to the clerk of the court, whose address is shown at the bottom of the writ of garnishment. Deliver one of the copies by first-class mail or in person to the plaintiff or plaintiff's attorney, whose name and address are shown at the bottom of the writ. Keep the other copy. YOU SHOULD DO THIS AS QUICKLY AS POSSIBLE, BUT NO LATER THAN 28 DAYS (4 WEEKS) AFTER THE DATE ON THE WRIT.

I/We claim the following money or property as exempt:

IF BANK ACCOUNT IS GARNISHED:

- [] The account contains payments from:
[] Temporary assistance for needy families, SSI, or other public assistance. I receive \$ monthly.
[] Social Security. I receive \$ monthly.
[] Veterans' Benefits. I receive \$ monthly.
[] U.S. Government Pension. I receive \$ monthly.
[] Unemployment Compensation. I receive \$ monthly.
[] Child support. I receive \$ monthly.
[] Other. Explain

IF EXEMPTION IN BANK ACCOUNT IS CLAIMED, ANSWER ONE OR BOTH OF THE FOLLOWING:

- [] No money other than from above payments are in the account.

- [] Moneys in addition to the above payments have been deposited in the account. Explain

IF EARNINGS ARE GARNISHED FOR CHILD SUPPORT:

- [] I claim maximum exemption.
[] I am supporting another child or other children.
[] I am supporting a husband, wife, or state registered domestic partner.

IF PENSION OR RETIREMENT BENEFITS ARE GARNISHED:

- [] Name and address of employer who is paying the benefits:

OTHER PROPERTY:

- [] Describe property
(If you claim other personal property as exempt, you must attach a list of all other personal property that you own.)

Table with 2 columns: Label (Print: Your name, Your signature, Address, Telephone number) and Description (If married or in a state registered domestic partnership, name of husband/wife/state registered domestic partner; Signature of husband, wife, or state registered domestic partner; Address (if different from yours); Telephone number (if different from yours))

CAUTION: If the plaintiff objects to your claim, you will have to go to court and give proof of your claim. For example, if you claim that a bank account is exempt, you may have to show the judge your bank statements and papers that show the source of the money you deposited in the bank. Your claim may be granted more quickly if you attach copies of such proof to your claim.

IF THE JUDGE DENIES YOUR EXEMPTION CLAIM, YOU WILL HAVE TO PAY THE PLAINTIFF'S COSTS. IF THE JUDGE DECIDES THAT YOU DID NOT MAKE THE CLAIM IN GOOD FAITH, HE OR SHE MAY DECIDE THAT YOU MUST PAY THE PLAINTIFF'S ATTORNEY FEES. [2011 c 162 § 6; 2011 c 162 § 5; 2010 1st sp.s. c 26 § 2; 2009 c 521 § 15; 2003 c 222 § 6; 1997 c 59 § 2; 1987 c 442 § 1014.]

Effective date—2011 c 162 § 6: "Section 6 of this act takes effect January 1, 2018." [2011 c 162 § 7.]

Chapter 6.32 RCW

PROCEEDINGS SUPPLEMENTAL TO EXECUTION

Sections

6.32.030	Third parties may be brought in for examination.
6.32.040	Before whom examined.
6.32.050	Procedure on examination.
6.32.060	Referee's oath.
6.32.070	Order authorizing payment by debtor of judgment debtor.
6.32.080	Order requiring delivery of money or property to sheriff.
6.32.090	Powers of sheriff.
6.32.110	Disposition of balance after judgment satisfied.
6.32.140	Service of warrant.
6.32.160	Costs to judgment creditor.
6.32.170	Costs to judgment debtor, when.
6.32.180	Disobedience of order punishable as contempt.
6.32.190	Attendance of judgment debtor.
6.32.200	Party or witness not excused from answering.

6.32.030 Third parties may be brought in for examination. Any person may be made a party to a supplemental proceeding by service of a like order in like manner as that required to be served upon the judgment debtor, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that execution has been issued and return made thereon wholly or partially unsatisfied, and also that any person or corporation has personal property of the judgment debtor of the value of twenty-five dollars or over, or is indebted to him or her in said amount, or is holding the title to real estate for the judgment debtor, or has knowledge concerning the property interests of the judgment debtor, the judge may make an order requiring such person or corporation, or an officer thereof, to appear at a specified time and place before him or her, or a referee appointed by him or her, and answer concerning the same. [2011 c 336 § 149; 1923 c 160 § 1; 1893 c 133 § 3; RRS § 615.]

6.32.040 Before whom examined. An order requiring a person to attend and be examined, made pursuant to any provision of this chapter, must require him or her so to attend and be examined either before the judge to whom the order is returnable or before a referee designated therein. Where the examination is taken before a referee, he or she must certify to the judge to whom the order is returnable all of the evidence and other proceedings taken before him or her. [2011 c 336 § 150; 1893 c 133 § 4; RRS § 616.]

6.32.050 Procedure on examination. Upon an examination made under this chapter, the answer of the party or witness examined must be under oath. A corporation must attend by and answer under the oath of an officer thereof, and the judge may, in his or her discretion, specify the officer. Either party may be examined as a witness in his or her own behalf, and may produce and examine other witnesses as upon the trial of an action. The judge or referee may adjourn any proceedings under this chapter, from time to time, as he or she thinks proper. [2011 c 336 § 151; 1893 c 133 § 5; RRS § 617.]

6.32.060 Referee's oath. Unless the parties expressly waive the referee's oath, a referee appointed as prescribed in this chapter must, before entering upon an examination or taking testimony, subscribe and take an oath that he or she will faithfully and fairly discharge his or her duty upon the

reference, and make a just and true report according to the best of his or her understanding. The oath must be returned to the judge with the report of the testimony. [2011 c 336 § 152; 1893 c 133 § 6; RRS § 618.]

6.32.070 Order authorizing payment by debtor of judgment debtor. At any time after the commencement of a special proceeding authorized by this chapter, and before the appointment of a receiver therein, or the extension of a receivership thereto, the judge by whom the order or warrant was granted or to whom it is made returnable, may in his or her discretion upon proof by affidavit to his or her satisfaction that a person or corporation is indebted to the judgment debtor, and upon such notice given to such person or corporation as he or she deems just, or without notice make an order permitting the person or corporation to pay the sheriff designated in the order a sum on account of the alleged indebtedness not exceeding the sum which will satisfy the execution. A payment thus made is to the extent thereof a discharge of the indebtedness except as against a transferee from the judgment debtor in good faith, and for a valuable consideration, of whose rights the person or corporation had actual or constructive notice when the payment was made. [2011 c 336 § 153; 1893 c 133 § 7; RRS § 619.]

6.32.080 Order requiring delivery of money or property to sheriff. Where it appears from the examination or testimony taken in the special proceedings authorized by this chapter that the judgment debtor has in his or her possession or under his or her control money or other personal property belonging to him or her, or that one or more articles of personal property capable of manual delivery, his or her right to the possession whereof is not substantially disputed, are in the possession or under the control of another person, the judge by whom the order or warrant was granted, or to whom it is returnable, may in his or her discretion, and upon such notice given to such persons as he or she deems just, or without notice, make an order directing the judgment debtor, or other person, immediately to pay the money or deliver the articles of personal property to a sheriff designated in the order, unless a receiver has been appointed or a receivership has been extended to the special proceedings, and in that case to the receiver. [2011 c 336 § 154; 1893 c 133 § 8; RRS § 620.]

6.32.090 Powers of sheriff. If the sheriff to whom money is paid or other property is delivered, pursuant to an order made as prescribed in RCW 6.32.080, does not then hold an execution upon the judgment against the property of the judgment debtor, he or she has the same rights and power, and is subject to the same duties and liabilities with respect to the money or property, as if the money had been collected or the property had been levied upon by him or her by virtue of such an execution, except as provided in RCW 6.32.100. [2011 c 336 § 155; 1893 c 133 § 9; RRS § 621.]

6.32.110 Disposition of balance after judgment satisfied. Where money is paid or property is delivered as prescribed in RCW 6.32.070, 6.32.080, 6.32.090, and 6.32.100 and afterwards the special proceeding is discontinued or dis-

missed, or the judgment is satisfied without resorting to the money or property, or a balance of the money or of the proceeds of the property, or a part of the property remains in the sheriff's or receiver's hands after satisfying the judgment and the costs and expenses of the special proceeding, the judge must make an order directing the sheriff or receiver to pay the money or deliver the property so remaining in his or her hands to the debtor, or to such other person as appears to be entitled thereto, upon payment of his or her fees and all other sums legally chargeable against the same. [2011 c 336 § 156; 1893 c 133 § 11; RRS § 623.]

6.32.140 Service of warrant. The sheriff, when he or she arrests a judgment debtor by virtue of a warrant issued as prescribed in this chapter, must deliver to him or her a copy of the warrant and of the affidavit upon which it was granted. [2011 c 336 § 157; 1893 c 133 § 14; RRS § 626.]

6.32.160 Costs to judgment creditor. The judge may make an order allowing to the judgment creditor a fixed sum as costs, consisting of his or her witness fees and referee's fees and other disbursements, and of a sum in addition thereto not exceeding twenty-five dollars, and directing the payment thereof out of any money which has come or may come to the hands of the receiver or of the sheriff within a time specified in the order. [2011 c 336 § 158; 1893 c 133 § 16; RRS § 628.]

6.32.170 Costs to judgment debtor, when. Where the judgment debtor or other person against whom the special proceeding is instituted has been examined, and property applicable to the payment of the judgment has not been discovered, the judge may make an order allowing him or her a sum, not to exceed twenty-five dollars, as costs, provided that any such sum so allowed the judgment debtor, shall be set off against the amount due the judgment creditor on his or her judgment. [2011 c 336 § 159; 1923 c 160 § 2; 1893 c 133 § 17; RRS § 629.]

6.32.180 Disobedience of order punishable as contempt. A person who refuses, or without sufficient excuse neglects, to obey an order of a judge or referee made pursuant to any of the provisions of this chapter, and duly served upon him or her, or an oral direction given directly to him or her by a judge or referee in the course of the special proceeding, or to attend before a judge or referee according to the command of a subpoena duly served upon him or her, may be punished by the judge of the court out of which the execution issued, as for contempt. [2011 c 336 § 160; 1893 c 133 § 18; RRS § 630.]

6.32.190 Attendance of judgment debtor. A judgment debtor who resides or does business in the state cannot be compelled to attend pursuant to an order made under the provisions of this chapter at a place without the county where his or her residence or place of business is situated. Where the judgment debtor to be examined under this chapter is a corporation the court may cause such corporation to appear and be examined by making like order or orders as are prescribed in this chapter, directed to any officer or officers thereof. [2011 c 336 § 161; 1893 c 133 § 19; RRS § 631.]

6.32.200 Party or witness not excused from answering. A party or witness examined in a special proceeding authorized by this chapter is not excused from answering a question on the ground that his or her examination will tend to convict him or her of a commission of a fraud, or to prove that he or she has been a party to or privy to or knowing of a conveyance, assignment, transfer, or other disposition of property for any purpose; or that he, she, or another person claims to be entitled as against the judgment creditor or receiver appointed or to be appointed in the special proceeding to hold property derived from or through the judgment debtor, or to be discharged from the payment of a debt which was due to the judgment debtor or to a person in his or her behalf. But an answer cannot be used as evidence against the person so answering in a criminal action or criminal proceeding. [2011 c 336 § 162; 1893 c 133 § 20; RRS § 632.]

Chapter 6.36 RCW

UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

Sections

6.36.160 Optional procedure.

6.36.160 Optional procedure. The right of a judgment creditor to bring an action to enforce his or her judgment instead of proceeding under this chapter remains unimpaired. [2011 c 336 § 163; 1953 c 191 § 16.]

Title 7

SPECIAL PROCEEDINGS AND ACTIONS

Chapters

- 7.06** Mandatory arbitration of civil actions.
- 7.16** Certiorari, mandamus, and prohibition.
- 7.21** Contempt of court.
- 7.25** Declaratory judgments of local bond issues.
- 7.28** Ejectment, quieting title.
- 7.36** Habeas corpus.
- 7.40** Injunctions.
- 7.42** Injunctions—Obscene materials.
- 7.44** Ne exeat.
- 7.48** Nuisances.
- 7.52** Partition.
- 7.56** Quo warranto.
- 7.60** Receivers.
- 7.68** Victims of crimes—Compensation, assistance.
- 7.70** Actions for injuries resulting from health care.
- 7.84** Natural resource infractions.

Chapter 7.06 RCW

MANDATORY ARBITRATION OF CIVIL ACTIONS

Sections

7.06.050 Decision and award—Appeals—Trial—Judgment.

7.06.050 Decision and award—Appeals—Trial—Judgment. (1) Following a hearing as prescribed by court rule, the arbitrator shall file his or her decision and award with the clerk of the superior court, together with proof of

service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

(a) Up to thirty days prior to the actual date of a trial de novo, a nonappealing party may serve upon the appealing party a written offer of compromise.

(b) In any case in which an offer of compromise is not accepted by the appealing party within ten calendar days after service thereof, for purposes of MAR 7.3, the amount of the offer of compromise shall replace the amount of the arbitrator's award for determining whether the party appealing the arbitrator's award has failed to improve that party's position on the trial de novo.

(c) A postarbitration offer of compromise shall not be filed or communicated to the court or the trier of fact until after judgment on the trial de novo, at which time a copy of the offer of compromise shall be filed for purposes of determining whether the party who appealed the arbitrator's award has failed to improve that party's position on the trial de novo, pursuant to MAR 7.3.

(2) If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered and may be presented to the court by any party, on notice, which judgment when entered shall have the same force and effect as judgments in civil actions. [2011 c 336 § 164; 2002 c 339 § 1; 1982 c 188 § 2; 1979 c 103 § 5.]

Chapter 7.16 RCW

CERTIORARI, MANDAMUS, AND PROHIBITION

Sections

7.16.180	Alternative or peremptory writs—Form.
7.16.210	Questions of fact, how determined.
7.16.260	Judgment for damages and costs—Peremptory mandate.
7.16.310	Alternative or peremptory writs—Form.

7.16.180 Alternative or peremptory writs—Form.

The writ may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court, at a specified time and place, why he or she has not done so. The peremptory writ must be in some similar form, except the words requiring the party to show cause why he or she has not done as commanded must be omitted and a return day inserted. [2011 c 336 § 165; 1895 c 65 § 18; RRS § 1016.]

7.16.210 Questions of fact, how determined. If an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based, the court may, in its discretion, order the question to be tried before a jury, and postpone the argument until such trial can be had, and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial, and the

county must be designated in which the same shall be had. The order may also direct the jury to assess any damages which the appellant may have sustained, in case they find for him or her. [2011 c 336 § 166; 1895 c 65 § 21; RRS § 1019.]

7.16.260 Judgment for damages and costs—Peremptory mandate. If judgment be given for the applicant he or she may recover the damages which he or she has sustained, as found by the jury or as may be determined by the court or referee, upon a reference to be ordered, together with costs; and for such damages and costs an execution may issue, and a peremptory mandate must also be awarded without delay. [2011 c 336 § 167; 1895 c 65 § 26; RRS § 1024.]

7.16.310 Alternative or peremptory writs—Form.

The writ must be either alternative or peremptory. The alternative writ must state generally the allegations against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court from which it is issued, and to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he or she should not be absolutely restrained, etc., must be omitted and a return day inserted. [2011 c 336 § 168; 1895 c 65 § 31; RRS § 1029.]

Chapter 7.21 RCW

CONTEMPT OF COURT

Sections

7.21.040	Punitive sanctions—Fines.
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7.21.040 Punitive sanctions—Fines. (1) Except as otherwise provided in RCW 7.21.050, a punitive sanction for contempt of court may be imposed only pursuant to this section.

(2)(a) An action to impose a punitive sanction for contempt of court shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction sought to be imposed.

(b) If there is probable cause to believe that a contempt has been committed, the prosecuting attorney or city attorney may file the information or complaint on his or her own initiative or at the request of a person aggrieved by the contempt.

(c) A request that the prosecuting attorney or the city attorney commence an action under this section may be made by a judge presiding in an action or proceeding to which a contempt relates. If required for the administration of justice, the judge making the request may appoint a special counsel to prosecute an action to impose a punitive sanction for contempt of court.

A judge making a request pursuant to this subsection shall be disqualified from presiding at the trial.

(d) If the alleged contempt involves disrespect to or criticism of a judge, that judge is disqualified from presiding at

the trial of the contempt unless the person charged consents to the judge presiding at the trial.

(3) The court may hold a hearing on a motion for a remedial sanction jointly with a trial on an information or complaint seeking a punitive sanction.

(4) A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

(5) If the defendant is found guilty of contempt of court under this section, the court may impose for each separate contempt of court a fine of not more than five thousand dollars or imprisonment for up to three hundred sixty-four days, or both. [2011 c 96 § 3; 2009 c 37 § 1; 1989 c 373 § 4.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 7.25 RCW

DECLARATORY JUDGMENTS OF LOCAL BOND ISSUES

Sections

7.25.020 Complaint—Defendants—Service—Intervention—Attorneys’ fee—Notice of action.

7.25.020 Complaint—Defendants—Service—Intervention—Attorneys’ fee—Notice of action. A complaint shall be prepared and filed in the superior court by such government entity setting forth such ordinance or resolution and that it is the purpose of the plaintiff to issue and sell bonds as stated therein and that it is desired that the right of the plaintiff to so issue such bonds and sell the same shall be tested and determined in said action. In said action all interested parties shall be deemed to be defendants. The title of the action shall be "In re (name of bond issue)." Upon the filing of the complaint the court shall, upon the application of the plaintiff, enter an order naming one or more interested parties upon whom service in said action shall be made as the representative of all interested parties, except such as may intervene as herein provided, and in such case the court shall fix and allow a reasonable attorneys’ fee in said action to the attorney who shall represent the representative interested parties as aforesaid, and such fee and all taxable costs incurred by such representative interested parties shall be taxed as costs against the plaintiff: PROVIDED, That if the interested parties appointed by the court shall default, the court shall appoint an attorney who shall defend said action on behalf of all interested parties, and such attorney shall be allowed a reasonable fee and taxable costs to be taxed against the plaintiff: PROVIDED FURTHER, That after filing the complaint, the plaintiff shall twice place a notice in a newspaper of general circulation within the boundaries of the government entity, stating the title of the action, informing the interested parties that the action has been commenced testing the validity of the bonds, and stating that any interested parties, as that term is defined herein, may intervene in such action and be represented therein by his or her own attorney. Thereupon, any interested parties who desire to intervene must apply to the court to intervene within ten days after the second publication of the notice. [2011 c 336 § 169; 1999 c 284 § 3; 1983 c 263 § 2; 1939 c 153 § 2; RRS § 5616-12. Formerly RCW 7.24.160.]

Chapter 7.28 RCW

EJECTMENT, QUIETING TITLE

Sections

7.28.010 Who may maintain actions—Service on nonresident defendant.

7.28.083 Adverse possession—Reimbursement of taxes or assessments—Payment of unpaid taxes or assessments—Awarding of costs and attorneys’ fees.

7.28.110 Substitution of landlord in action against tenant.

7.28.120 Pleadings—Superior title prevails.

7.28.130 Defendant must plead nature of his or her estate or right to possession.

7.28.140 Verdict of jury.

7.28.150 Damages—Limitation—Permanent improvements.

7.28.160 Defendant’s counterclaim for permanent improvements and taxes paid.

7.28.180 Defendant’s counterclaim for permanent improvements and taxes paid—Judgment on counterclaim—Payment.

7.28.210 Order for survey of property—Contents of order—Service.

7.28.230 Mortgagee cannot maintain action for possession—Possession to collect mortgaged, pledged, or assigned rents and profits—Perfection of security interest.

7.28.240 Action between cotenants.

7.28.250 Action against tenant on failure to pay rent.

7.28.260 Effect of judgment—Lis pendens—Vacation.

7.28.270 Effect of vacation of judgment.

7.28.280 Conflicting claims, donation law, generally—Joinder of parties.

7.28.010 Who may maintain actions—Service on nonresident defendant. Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff’s title; an action to quiet title may be brought by the known heirs of any deceased person, or of any person presumed in law to be deceased, or by the successors in interest of such known heirs against the unknown heirs of such deceased person or against such person presumed to be deceased and his or her unknown heirs, and if it shall be made to appear in such action that the plaintiffs are heirs of the deceased person, or the person presumed in law to be deceased, or the successors in interest of such heirs, and have been in possession of the real property involved in such action for ten years preceding the time of the commencement of such action, and that during said time no person other than the plaintiff in the action or his or her grantors has claimed or asserted any right or title or interest in said property, the court may adjudge and decree the plaintiff or plaintiffs in such action to be the owners of such real property, free from all claims of any unknown heirs of such deceased person, or person presumed in law to be deceased; and an action to quiet title may be maintained by any person in the actual possession of real property against the unknown heirs of a person known to be dead, or against any person where it is not known whether such person is dead or not, and against the unknown heirs of such person, and if it shall thereafter transpire that such person was at the time of commencing such action dead the judgment or decree in such action shall be as binding and conclusive on the heirs of such person as though they had been known and named; and in all actions, under this section, to quiet or remove a cloud from the title to real property, if the defendant be absent or a nonresident of this state, or cannot, after due diligence, be found within the state,

or conceals himself or herself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law; and the court may appoint a trustee for such absent or nonresident defendant, to make or cancel any deed or conveyance of whatsoever nature, or do any other act to carry into effect the judgment or the decree of the court. [2011 c 336 § 170; 1911 c 83 § 1; 1890 c 72 § 1; Code 1881 § 536; 1879 p 134 § 1; 1877 p 112 § 540; 1869 p 128 § 488; 1854 p 205 § 398; RRS § 785. Formerly RCW 7.28.010, 7.28.020, 7.28.030, and 7.28.040.]

Process, publication, etc.: Chapter 4.28 RCW.

Publication of legal notices: Chapter 65.16 RCW.

7.28.083 Adverse possession—Reimbursement of taxes or assessments—Payment of unpaid taxes or assessments—Awarding of costs and attorneys' fees. (1) A party who prevails against the holder of record title at the time an action asserting title to real property by adverse possession was filed, or against a subsequent purchaser from such holder, may be required to:

(a) Reimburse such holder or purchaser for part or all of any taxes or assessments levied on the real property during the period the prevailing party was in possession of the real property in question and which are proven by competent evidence to have been paid by such holder or purchaser; and

(b) Pay to the treasurer of the county in which the real property is located part or all of any taxes or assessments levied on the real property after the filing of the adverse possession claim and which are due and remain unpaid at the time judgment on the claim is entered.

(2) If the court orders reimbursement for taxes or assessments paid or payment of taxes or assessments due under subsection (1) of this section, the court shall determine how to allocate taxes or assessments between the property acquired by adverse possession and the property retained by the title holder. In making its determination, the court shall consider all the facts and shall order such reimbursement or payment as appears equitable and just.

(3) The prevailing party in an action asserting title to real property by adverse possession may request the court to award costs and reasonable attorneys' fees. The court may award all or a portion of costs and reasonable attorneys' fees to the prevailing party if, after considering all the facts, the court determines such an award is equitable and just. [2011 c 255 § 1.]

Application—2011 c 255: "This act applies to actions filed on or after July 1, 2012." [2011 c 255 § 2.]

7.28.110 Substitution of landlord in action against tenant. A defendant who is in actual possession may, for answer, plead that he or she is in possession only as a tenant of another, naming him or her and his or her place of residence, and thereupon the landlord, if he or she applies therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him or her. If the landlord does not apply to be made defendant within the time the tenant is allowed to answer, thereafter he or she shall not be allowed to, but he or she shall be made defendant if the plaintiff require it. If the landlord be made defendant on motion of the plaintiff he or

she shall be required to appear and answer within ten days from notice of the pendency of the action and the order making him or her defendant, or such further notice as the court or judge thereof may prescribe. [2011 c 336 § 171; Code 1881 § 537; 1877 p 112 § 541; 1869 p 128 § 489; RRS § 792.]

7.28.120 Pleadings—Superior title prevails. The plaintiff in such action shall set forth in his or her complaint the nature of his or her estate, claim, or title to the property, and the defendant may set up a legal or equitable defense to plaintiff's claims; and the superior title, whether legal or equitable, shall prevail. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had. [2011 c 336 § 172; Code 1881 § 538; 1879 p 134 § 2; 1877 p 113 § 542; 1869 p 128 § 490; RRS § 793.]

7.28.130 Defendant must plead nature of his or her estate or right to possession. The defendant shall not be allowed to give in evidence any estate in himself, herself, or another in the property, or any license or right to the possession thereof unless the same be pleaded in his or her answer. If so pleaded, the nature and duration of such estate, or license or right to the possession, shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he or she shall specify for what particular part he or she does defend. In an action against a tenant, the judgment shall be conclusive against a landlord who has been made defendant in place of the tenant, to the same extent as if the action had been originally commenced against him or her. [2011 c 336 § 173; Code 1881 § 539; 1877 p 113 § 543; 1869 p 129 § 491; RRS § 794.]

7.28.140 Verdict of jury. The jury by their verdict shall find as follows:

(1) If the verdict be for the plaintiff, that he or she is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature and duration of his or her estate in such property, part thereof, or undivided share or interest, in either, as the case may be.

(2) If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property or part thereof, or license, or right to the possession of either established on the trial by the defendant, if any, in effect as the same is required to be pleaded. [2011 c 336 § 174; Code 1881 § 540; 1877 p 113 § 544; 1869 p 129 § 492; RRS § 795.]

Rules of court: CR 49.

General, special verdicts: RCW 4.44.410 through 4.44.440.

7.28.150 Damages—Limitation—Permanent improvements. The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement, to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When per-

manent improvements have been made upon the property by the defendant, or those under whom he or she claims holding under color of title adversely to the claim of the plaintiff, in good faith, the value thereof at the time of trial shall be allowed as a setoff against such damages. [2011 c 336 § 175; Code 1881 § 541; 1877 p 113 § 545; 1869 p 129 § 493; RRS § 796.]

Reviser's note: Compare the last sentence of this section with RCW 7.28.160 through 7.28.180.

7.28.160 Defendant's counterclaim for permanent improvements and taxes paid. In an action for the recovery of real property upon which permanent improvements have been made or general or special taxes or local assessments have been paid by a defendant, or those under whom he or she claims, holding in good faith under color or claim of title adversely to the claim of plaintiff, the value of such improvements and the amount of such taxes or assessments with interest thereon from date of payment must be allowed as a counterclaim to the defendant. [2011 c 336 § 176; 1903 c 137 § 1; RRS § 797.]

7.28.180 Defendant's counterclaim for permanent improvements and taxes paid—Judgment on counterclaim—Payment. If the judgment be in favor of the plaintiff for the recovery of the realty, and of the defendant upon the counterclaim, the plaintiff shall be entitled to recover such damages as he or she may be found to have suffered through the withholding of the premises and waste committed thereupon by the defendant or those under whom he or she claims, but against this recovery shall be offset pro tanto the value of the permanent improvements and the amount of said taxes and assessments with interest found as above provided. Should the value of improvements or taxes or assessments with interest exceed the recovery for damages, the plaintiff, shall, within two months, pay to the defendant the difference between the two sums and upon proof, after notice, to the defendant, that this has been done, the court shall make an order declaring that fact, and that title to the improvements is vested in him or her. Should the plaintiff fail to make such payment, the defendant may at any time within two months after the time limited for such payment to be made, pay to the plaintiff the value of the land apart from the improvements, and the amount of the damages awarded against him or her, and he or she thereupon shall be vested with title to the land, and, after notice to the plaintiff, the court shall make an order reciting the fact and adjudging title to be in him or her. Should neither party make the payment above provided, within the specified time, they shall be deemed to be tenants in common of the premises, including the improvements, each holding an interest proportionate to the value of his or her property determined in the manner specified in RCW 7.28.170: PROVIDED, That the interest of the owner of the improvements shall be the difference between the value of the improvements and the amount of damages recovered against him or her by the plaintiff. [2011 c 336 § 177; 1903 c 137 § 3; RRS § 799.]

7.28.210 Order for survey of property—Contents of order—Service. The order shall describe the property, and a

copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement; but if any unnecessary injury be done to the premises, he or she shall be liable therefor. [2011 c 336 § 178; Code 1881 § 544; 1877 p 114 § 548; 1869 p 130 § 496; RRS § 802.]

7.28.230 Mortgagee cannot maintain action for possession—Possession to collect mortgaged, pledged, or assigned rents and profits—Perfection of security interest. (1) A mortgage of any interest in real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property, without a foreclosure and sale according to law: PROVIDED, That nothing in this section shall be construed as any limitation upon the right of the owner of real property to mortgage, pledge or assign the rents and profits thereof, nor as prohibiting the mortgagee, pledgee or assignee of such rents and profits, or any trustee under a mortgage or trust deed either contemporaneously or upon the happening of a future event of default, from entering into possession of any real property, other than farm lands or the homestead of the mortgagor or his or her successor in interest, for the purpose of collecting the rents and profits thereof for application in accordance with the provisions of the mortgage or trust deed or other instrument creating the lien, nor as any limitation upon the power of a court of equity to appoint a receiver to take charge of such real property and collect such rents and profits thereof for application in accordance with the terms of such mortgage, trust deed, or assignment.

(2) Until paid, the rents and profits of real property constitute real property for the purposes of mortgages, trust deeds, or assignments whether or not said rents and profits have accrued. The provisions of RCW 65.08.070 as now or hereafter amended shall be applicable to such rents and profits, and such rents and profits are excluded from *Article 62A.9 RCW.

(3) The recording of an assignment, mortgage, or pledge of unpaid rents and profits of real property, intended as security, in accordance with RCW 65.08.070, shall immediately perfect the security interest in the assignee, mortgagee, or pledgee and shall not require any further action by the holder of the security interest to be perfected as to any subsequent purchaser, mortgagee, or assignee. Any lien created by such assignment, mortgage, or pledge shall, when recorded, be deemed specific, perfected, and choate even if recorded prior to July 23, 1989. [2011 c 336 § 179; 1991 c 188 § 1; 1989 c 73 § 1; 1969 ex.s. c 122 § 1; Code 1881 § 546; 1877 p 114 § 550; 1869 p 130 § 498; RRS § 804.]

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

7.28.240 Action between cotenants. In an action by a tenant in common, or a joint tenant of real property against his or her cotenant, the plaintiff must show, in addition to his or her evidence of right, that the defendant either denied the plaintiff's right or did some act amounting to such denial. [2011 c 336 § 180; Code 1881 § 547; 1877 p 114 § 551; 1869 p 130 § 499; RRS § 805.]

7.28.250 Action against tenant on failure to pay rent.

When in the case of a lease of real property and the failure of tenant to pay rent, the landlord has a subsisting right to reenter for such failure; he or she may bring an action to recover the possession of such property, and such action is equivalent to a demand of the rent and a reentry upon the property. But if at any time before the judgment in such action, the lessee or his or her successor in interest as to the whole or a part of the property, pay to the plaintiff, or bring into court the amount of rent then in arrear, with interest and cost of action, and perform the other covenants or agreements on the part of the lessee, he or she shall be entitled to continue in the possession according to the terms of the lease. [2011 c 336 § 181; Code 1881 § 548; 1877 p 114 § 552; 1869 p 131 § 500; No RRS.]

Forcible entry, detainer: Chapter 59.12 RCW.

Rent default, less than forty dollars: Chapter 59.08 RCW.

Tenancies: Chapter 59.04 RCW.

7.28.260 Effect of judgment—Lis pendens—Vacation.

In an action to recover possession of real property, the judgment rendered therein shall be conclusive as to the estate in such property and the right of possession thereof, so far as the same is thereby determined, upon all persons claiming by, through, or under the party against whom the judgment is rendered, by title or interest passing after the commencement of the action, if the party in whose favor the judgment is rendered shall have filed a notice of the pendency of the action as required by RCW 4.28.320. When service of the notice is made by publication, and judgment is given for failure to answer, at any time within two years from the entry thereof, the defendant or his or her successor in interest as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order, vacating the judgment and granting him or her a new trial, upon the payment of the costs of the action. [2011 c 336 § 182; 1909 c 35 § 1; Code 1881 § 549; 1877 p 114 § 553; 1869 p 131 § 501; RRS § 806.]

Rules of court: Cf. CR 58, 60(e).

New trials: Chapter 4.76 RCW.

Vacation of judgments: Chapter 4.72 RCW.

7.28.270 Effect of vacation of judgment. If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in RCW 7.28.260, such possession shall not be thereby affected in any way; and if judgment be given for defendant in the new trial, he or she shall be entitled to restitution by execution in the same manner as if he or she were plaintiff. [2011 c 336 § 183; Code 1881 § 550; 1877 p 115 § 554; 1869 p 131 § 502; RRS § 807.]

Rules of court: Cf. CR 58, 60(e).

7.28.280 Conflicting claims, donation law, generally—Joinder of parties. In an action at law, for the recovery of the possession of real property, if either party claims the property as a donee of the United States, and under the act of congress approved September 27th, 1850, commonly called the "Donation law," or the acts amendatory thereof, such party, from the date of his or her settlement thereon, as provided in said act, shall be deemed to have a legal estate in

fee, in such property, to continue upon condition that he or she perform the conditions required by such acts, which estate is unconditional and indefeasible after the performance of such conditions. In such action, if both plaintiff and defendant claim title to the same real property, by virtue of settlement, under such acts, such settlement and performance of the subsequent condition shall be prima facie presumed in favor of the party having or claiming under the elder certificate, or patent, as the case may be, unless it appears upon the face of such certificate or patent that the same is absolutely void. Any person in possession, by himself or herself or his or her tenant, of real property, and any private or municipal corporation in possession by itself or its tenant of any real property, or when such real property is not in the actual possession of anyone, any person or private or municipal corporation claiming title to any real property under a patent from the United States, or during his, her, or its claim of title to such real property under a patent from the United States for such real estate, may maintain a civil action against any person or persons, corporations, or associations claiming an interest in said real property or any part thereof, or any right thereto adverse to him, her, them, or it, for the purpose of determining such claim, estate, or interest; and where several persons, or private or municipal corporations are in possession of, or claim as aforesaid, separate parcels of real property, and an adverse interest is claimed or claim made in or to any such parcels, by any other person, persons, corporations, or associations, arising out of a question, conveyance, statute, grant, or other matter common to all such parcels of real estate, all or any portion of such persons or corporations so in possession, or claiming such parcel of real property may unite as plaintiffs in such suit to determine such adverse claim or interest against all persons, corporations, or associations claiming such adverse interest. [2011 c 336 § 184; Code 1881 § 551; 1877 p 116 § 556; 1869 p 132 § 504; RRS §§ 808, 809. Formerly RCW 7.28.280 and 7.28.290.]

Chapter 7.36 RCW**HABEAS CORPUS**

Sections

7.36.010	Who may prosecute writ.
7.36.030	Petition—Contents.
7.36.050	To whom directed—Contents.
7.36.060	Delivery to sheriff if to him or her directed.
7.36.070	Service by sheriff if directed to another.
7.36.080	Service when person not found.
7.36.090	Return—Attachment for refusal.
7.36.100	Form of return—Production of person.
7.36.190	Warrant to prevent removal.

7.36.010 Who may prosecute writ. Every person restrained of his or her liberty under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the restraint, and shall be delivered therefrom when illegal. [2011 c 336 § 185; Code 1881 § 666; 1877 p 138 § 669; 1869 p 156 § 606; 1854 p 212 § 434; RRS § 1063.]

7.36.030 Petition—Contents. Application for the writ shall be made by petition, signed and verified either by the plaintiff or by some person in his or her behalf, and shall specify:

(1) By whom the petitioner is restrained of his or her liberty, and the place where, (naming the parties if they are known, or describing them if they are not known).

(2) The cause or pretense of the restraint according to the best of the knowledge and belief of the applicant.

(3) If the restraint be alleged to be illegal, in what the illegality consists. [2011 c 336 § 186; Code 1881 § 667; 1877 p 138 § 670; 1869 p 156 § 607; 1854 p 212 § 435; RRS § 1065.]

7.36.050 To whom directed—Contents. The writ shall be directed to the officer or party having the person under restraint, commanding him or her to have such person before the court or judge at such time and place as the court or judge shall direct to do and receive what shall be ordered concerning him or her, and have then and there the writ. [2011 c 336 § 187; Code 1881 § 669; 1877 p 138 § 672; 1869 p 156 § 609; 1854 p 212 § 437; RRS § 1067.]

7.36.060 Delivery to sheriff if to him or her directed. If the writ be directed to the sheriff, it shall be delivered by the clerk to him or her without delay. [2011 c 336 § 188; Code 1881 § 670; 1877 p 138 § 673; 1869 p 156 § 610; 1854 p 212 § 438; RRS § 1068.]

7.36.070 Service by sheriff if directed to another. If the writ be directed to any other person, it shall be delivered to the sheriff and shall be by him or her served by delivering the same to such person without delay. [2011 c 336 § 189; Code 1881 § 671; 1877 p 139 § 674; 1869 p 156 § 611; 1854 p 212 § 430; RRS § 1069.]

7.36.080 Service when person not found. If the person to whom such writ is directed cannot be found or shall refuse admittance to the sheriff, the same may be served by leaving it at the residence of the person to whom it is directed, or by posting the same in some conspicuous place, either on his or her dwelling house or where the party is confined or under restraint. [2011 c 336 § 190; Code 1881 § 672; 1877 p 139 § 675; 1869 p 157 § 612; 1854 p 212 § 440; RRS § 1070.]

7.36.090 Return—Attachment for refusal. The sheriff or other person to whom the writ is directed shall make immediate return thereof, and if he or she refuse after due service to make return, the court shall enforce obedience by attachment. [2011 c 336 § 191; Code 1881 § 673; 1877 p 139 § 676; 1869 p 157 § 613; 1854 p 213 § 441; RRS § 1071.]

7.36.100 Form of return—Production of person. The return must be signed and verified by the person making it, who shall state:

(1) The authority or cause of the restraint of the party in his or her custody.

(2) If the authority shall be in writing, he or she shall return a copy and produce the original on the hearing.

(3) If he or she has had the party in his or her custody or under his or her restraint, and has transferred him or her to another, he or she shall state to whom, the time, place, and cause of the transfer. He or she shall produce the party at the hearing unless prevented by sickness or infirmity, which

must be shown in the return. [2011 c 336 § 192; Code 1881 § 674; 1877 p 139 § 677; 1869 p 157 § 614; 1854 p 213 § 442; RRS § 1072.]

7.36.190 Warrant to prevent removal. Whenever it shall appear by affidavit that any one is illegally held in custody or restraint, and that there is good reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ can be enforced, such court or judge may cause a warrant to be issued reciting the facts, and directed to the sheriff or any constable of the county, commanding him or her to take the person thus held in custody or restraint, and forthwith bring him or her before the court or judge to be dealt with according to the law. [2011 c 336 § 193; Code 1881 § 682; 1877 p 140 § 685; 1869 p 158 § 622; 1854 p 214 § 450; RRS § 1080.]

Chapter 7.40 RCW INJUNCTIONS

Sections

7.40.020	Grounds for issuance.
7.40.090	Bond for injunction after temporary restraining order.
7.40.100	Copy of order serves as writ.
7.40.110	Stay of judgment—Release of errors.
7.40.120	Injunction, who is bound by.
7.40.130	When adverse party becomes bound.
7.40.150	Contempt for disobedience.
7.40.160	Attachment and arrest—Indemnity of plaintiff.
7.40.170	Bond for appearance.

7.40.020 Grounds for issuance. When it appears by the complaint that the plaintiff is entitled to the relief demanded and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great injury to the plaintiff, or when during the litigation, it appears that the defendant is doing, or threatened, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action tending to render the judgment ineffectual; or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court, which may afterwards be dissolved or modified upon motion. And where it appears in the complaint at the commencement of the action, or during the pendency thereof, by affidavit, that the defendant threatens, or is about to remove or dispose of his or her property with intent to defraud his or her creditors, a temporary injunction may be granted to restrain the removal or disposition of his or her property. [2011 c 336 § 194; Code 1881 § 154; 1877 p 33 § 154; 1869 p 38 § 152; 1854 p 152 § 112; RRS § 719.]

7.40.090 Bond for injunction after temporary restraining order. When an injunction is granted upon the hearing, after a temporary restraining order, the plaintiff shall not be required to enter into a second bond, unless the former shall be deemed insufficient, but the plaintiff and his or her surety shall remain liable upon his or her original bond.

[2011 c 336 § 195; Code 1881 § 160; 1877 p 33 § 160; 1869 p 39 § 158; 1854 p 153 § 118; RRS § 726.]

Rules of court: *Cf. CR 65(c).*

7.40.100 Copy of order serves as writ. It shall not be necessary to issue a writ of injunction, but the clerk shall issue a copy of the order of injunction duly certified by him or her, which shall be forthwith served by delivering the same to the adverse party. [2011 c 336 § 196; Code 1881 § 161; 1877 p 33 § 161; 1869 p 39 § 159; 1854 p 153 § 119; RRS § 727.]

7.40.110 Stay of judgment—Release of errors. In application to stay proceedings after judgment, the plaintiff shall endorse upon his or her complaint a release of errors in the judgment whenever required to do so by the judge or court. [2011 c 336 § 197; Code 1881 § 162; 1877 p 33 § 162; 1869 p 39 § 160; 1854 p 153 § 120; RRS § 728.]

7.40.120 Injunction, who is bound by. An order of injunction shall bind every person and officer restrained from the time he or she is informed thereof. [2011 c 336 § 198; Code 1881 § 163; 1877 p 33 § 163; 1869 p 40 § 161; 1854 p 153 § 121; RRS § 729.]

7.40.130 When adverse party becomes bound. When notice of the application for an injunction has been served upon the adverse party, it shall not be necessary to serve the order upon him or her, but he or she shall be bound by the injunction as soon as the bond required of the plaintiff is executed and delivered to the proper officer. [2011 c 336 § 199; Code 1881 § 164; 1877 p 34 § 164; 1869 p 40 § 162; 1854 p 154 § 122; RRS § 730.]

7.40.150 Contempt for disobedience. Whenever it shall appear to any court granting a restraining order or an order of injunction, or by affidavit, that any person has willfully disobeyed the order after notice thereof, such court shall award an attachment for contempt against the party charged, or an order to show cause why it should not issue. The attachment or order shall be issued by the clerk of the court, and directed to the sheriff, and shall be served by him or her. [2011 c 336 § 200; 1957 c 9 § 12; Code 1881 § 166; 1877 p 34 § 166; 1869 p 40 § 164; 1854 p 154 § 124; RRS § 732.]

7.40.160 Attachment and arrest—Indemnity of plaintiff. The attachment for contempt shall be immediately served, by arresting the party charged, and bringing him or her into court, if in session, to be dealt with as in other cases of contempt; and the court shall also take all necessary measures to secure and indemnify the plaintiff against damages in the premises. [2011 c 336 § 201; Code 1881 § 167; 1877 p 34 § 167; 1869 p 40 § 165; 1854 p 154 § 125; RRS § 733.]

7.40.170 Bond for appearance. If the court is not in session the officer making the arrest shall cause the person to enter into a bond, with surety, to be approved by the officer, conditioned that he or she personally appear in open court whenever his or her appearance shall be required, to answer such contempt, and that he or she will pay to the plaintiff all

his or her damages and costs occasioned by the breach of the order; and in default thereof he or she shall be committed to the jail of the county until he or she shall enter into such bond with surety, or be otherwise legally discharged. [2011 c 336 § 202; 1891 c 56 § 1; Code 1881 § 168; 1877 p 34 § 168; 1869 p 40 § 166; 1854 p 154 § 126; RRS § 734.]

Chapter 7.42 RCW

INJUNCTIONS—OBSCENE MATERIALS

Sections

7.42.020	Injunction authorized.
7.42.060	Knowledge of contents chargeable after service.

7.42.020 Injunction authorized. The prosecuting attorney of every county of the state, in which a person, firm, or corporation sells or distributes or offers to sell or distribute or has in his or her possession with intent to sell or distribute any book, magazine, pamphlet, comic book, story paper, writing, paper, newspaper, phonograph record, magnetic tape, electric or mechanical transcription, picture, drawing, photograph, figure, image, or any written or printed matter of an indecent character, which is obscene, lewd, lascivious, filthy, or indecent, or which contains an article or instrument of indecent use or purports to be for indecent use or purpose, may maintain an action in the name of the state for an injunction against such person, firm, or corporation in the superior court to prevent the sale or further sale or the distribution or further distribution or the acquisition or possession of any book, magazine, pamphlet, comic book, story paper, writing, paper, newspaper, phonograph record, magnetic tape, electric or mechanical transcription, picture, drawing, photograph, figure, or image or any written or printed matter of indecent character, herein described. [2011 c 336 § 203; 1959 c 105 § 2.]

7.42.060 Knowledge of contents chargeable after service. Every person, firm, or corporation who sells, distributes, or acquires possession with intent to sell or distribute any of the matter described in RCW 7.42.020, after the service upon him or her of a summons and complaint in an action brought by the prosecuting attorney pursuant to this chapter is chargeable with knowledge of the contents thereof. [2011 c 336 § 204; 1959 c 105 § 6.]

Chapter 7.44 RCW

NE EXEAT

Sections

7.44.010	Affidavit for writ.
7.44.020	Complaint.
7.44.021	Arrest and bail—Bond.
7.44.030	Recognizance of defendant.
7.44.031	Recognizance of defendant—Discharge by securing performance.

7.44.010 Affidavit for writ. Actions may be commenced upon any agreement in writing before the time for the performance of the contract expires, when the plaintiff or his or her agent shall make and file an affidavit with the clerk of the proper court, that the defendant is about to leave the state

without performing or making provisions for the performance of the contract, taking with him or her property, moneys, credits, or effects subject to execution, with intent to defraud plaintiff. [2011 c 336 § 205; Code 1881 § 636; 1877 p 133 § 639; 1869 p 149 § 576; 1854 p 209 § 418; RRS § 778.]

7.44.020 Complaint. At the time of filing the affidavit the plaintiff shall also file his or her complaint in the action, and thenceforth the action shall proceed as other actions at law, except as otherwise provided in this chapter. [2011 c 336 § 206; 1891 c 42 (p 81) § 1; Code 1881 § 637; 1877 p 133 § 640; 1869 p 149 § 577; 1854 p 209 § 419; RRS § 779, part: FORMER PARTS OF SECTION: 1891 c 42 § 2 now codified as RCW 7.44.021.]

7.44.021 Arrest and bail—Bond. Upon such affidavit and complaint being filed, the clerk shall issue an order of arrest and bail, directed to the sheriff, which shall be issued, served, and returned in all respects as such orders in other cases; before such order shall issue the plaintiff shall file in the office of the clerk a bond, with sufficient surety, to be approved by the clerk, conditioned that the plaintiff will pay the defendant such damages and costs as he or she shall wrongfully sustain by reason of the action, which surety shall justify as provided by law. [2011 c 336 § 207; 1957 c 51 § 10; 1891 c 42 § 2. Formerly RCW 7.44.020, part.]

Corporate surety—Insurance: Chapter 48.28 RCW.

7.44.030 Recognizance of defendant. The sheriff shall require the defendant to enter into a bond, with sufficient surety, personally to appear within the time allowed by law for answering the complaint, and to abide the order of the court; and in default thereof the defendant shall be committed to prison until discharged in due course of law; such special bail shall be liable for the principal, and shall have a right to arrest and deliver him or her up, as in other cases, and the defendant may give other bail. [2011 c 336 § 208; 1891 c 42 § 3; Code 1881 § 638; 1877 p 133 § 641; 1869 p 149 § 578; 1854 p 209 § 420; RRS § 780, part. FORMER PARTS OF SECTION: Code 1881 § 639; 1877 p 133 § 642; 1869 p 150 § 579; 1854 p 209 § 421 now codified as RCW 7.44.031.]

7.44.031 Recognizance of defendant—Discharge by securing performance. Instead of giving special bail, as above provided, the defendant shall be entitled to his or her discharge from custody if he or she will secure the performance of the contract to the satisfaction of the plaintiff. [2011 c 336 § 209; Code 1881 § 639; 1877 p 133 § 642; 1869 p 150 § 579; 1854 p 209 § 421; RRS § 780, part. Formerly RCW 7.44.030, part.]

Chapter 7.48 RCW NUISANCES

Sections

7.48.030	Issuance and execution of warrant.
7.48.040	Stay of issuance of warrant.
7.48.058	Maintaining action to abate moral nuisance—Bond.
7.48.076	Moral nuisance—Trial—Costs—Dismissal—Judgment.

7.48.078	Moral nuisance—Judgment—Penalties—Disposal of personal property.
7.48.085	Moral nuisance—Property owner may repossess.
7.48.100	Moral nuisance—Immunity of certain motion picture theatre employees.
7.48.110	Houses of lewdness, assignation or prostitution may be abated—Voluntary abatement.
7.48.210	Civil action, who may maintain.
7.48.230	Public nuisance—Abatement.
7.48.270	Stay of warrant.

7.48.030 Issuance and execution of warrant. If the order be made, the clerk shall thereafter, at any time within six months, when requested by the plaintiff, issue such warrant directed to the sheriff, requiring him or her forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his or her proceedings indorsed thereon. The expenses of abating the nuisance may be levied by the sheriff on the property of the defendant, and in this respect the warrant is to be deemed an execution against property. [2011 c 336 § 210; Code 1881 § 607; 1877 p 126 § 612; 1869 p 145 § 561; 1854 p 207 § 407; RRS § 945.]

7.48.040 Stay of issuance of warrant. At any time before the order is made or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance himself or herself, upon his or her giving bond to the plaintiff in a sufficient amount with one or more sureties, to the satisfaction of the court or judge thereof, that he or she will abate it within the time and in the manner specified in such order. The sureties shall justify as provided by law. If the defendant fails to abate such nuisance within the time specified, the warrant for the abatement of the nuisance may issue as if the same had not been stayed. [2011 c 336 § 211; 1957 c 51 § 11; Code 1881 § 608; 1877 p 127 § 613; 1869 p 145 § 562; RRS § 946.]

Corporate surety—Insurance: Chapter 48.28 RCW.

7.48.058 Maintaining action to abate moral nuisance—Bond. The attorney general, prosecuting attorney, city attorney, city prosecutor, or any citizen of the county may maintain an action of an equitable nature in the name of the state of Washington upon the relation of such attorney general, prosecuting attorney, city attorney, city prosecutor, or citizen, to abate a moral nuisance, to perpetually enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a moral nuisance.

If such action is instituted by a private person, the complainant shall execute a bond to the person against whom complaint is made, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than five hundred dollars, to secure to the party enjoined the damages he or she may sustain if such action is wrongfully brought, and the court finds there was no reasonable grounds or cause for said action and the case is dismissed for that reason before trial or for want of prosecution. No bond shall be required of the attorney general, prosecuting attorney, city attorney, or city prosecutor, and no action shall be maintained against such public official for his or her official action when

brought in good faith. [2011 c 336 § 212; 1979 c 1 § 5 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.076 Moral nuisance—Trial—Costs—Dismissal—Judgment. If the action is brought by a person who is a citizen of the county, and the court finds that there were no reasonable grounds or probable cause for bringing said action, and the case is dismissed before trial for that reason or for want of prosecution, the costs, including attorneys' fees, may be taxed to such person.

If the existence of the nuisance is established upon the trial, a judgment shall be entered which shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere. The entire expenses of such abatement, including attorneys' fees, shall be recoverable by the plaintiff as a part of his or her costs of the lawsuit.

If the complaint is filed by a person who is a citizen of the county, it shall not be dismissed except upon a sworn statement by the complainant and his or her attorney, setting forth the reason why the action should be dismissed and the dismissal approved by the prosecuting attorney in writing or in open court. If the judge is of the opinion that the action should not be dismissed, he or she may direct the prosecuting attorney to prosecute said action to judgment at the expense of the county, and if the action is continued for more than one term of court, any person who is a citizen of the county or has an office therein, or the attorney general, the prosecuting attorney, city attorney, or city prosecutor, may be substituted for the complainant and prosecute said action to judgment. [2011 c 336 § 213; 1979 c 1 § 14 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.078 Moral nuisance—Judgment—Penalties—Disposal of personal property. If the existence of a nuisance is admitted or established in an action as provided for in RCW 7.48.058 or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance and not already released under authority of the court as provided for in RCW 7.48.066 and 7.48.068, and shall direct the sale of such thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution. Lewd matter shall be destroyed and shall not be sold.

Such judgment shall impose a penalty of three hundred dollars for the maintenance of such nuisance, which penalty shall be imposed against the person or persons found to have maintained the nuisance, and, in case any owner or agent of the building found to have had actual or constructive notice of the maintenance of such nuisance, against such owner or agent, and against the building kept or used for the purposes of maintaining a moral nuisance, which penalty shall be collected by execution as in civil actions, and when collected, shall be paid into the current expense fund of the county in which the judgment is had.

Such order shall also require the renewal for one year of any bond furnished by the owner of the real property, as pro-

vided in RCW 7.48.068 or, if not so furnished, shall continue for one year any closing order issued at the time of granting the temporary injunction, or, if no such closing order was then issued, shall include an order directing the effectual closing of the place against its use for any purpose and keeping it closed for a period of one year unless sooner released.

The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided in RCW 7.48.068.

Owners of unsold personal property and contents so seized must appear and claim the same within ten days after such order of abatement is made, and prove innocence to the satisfaction of the court of any knowledge of such use thereof, and that with reasonable care and diligence they could not have known thereof. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section. For removing and selling the personal property and contents, the officer shall be entitled to charge and receive the same fees as he or she would for levying upon and selling like property on execution; and for closing the place and keeping it closed, a reasonable sum shall be allowed by the court. [2011 c 336 § 214; 1979 c 1 § 15 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.085 Moral nuisance—Property owner may repossess. If a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of maintaining a moral nuisance, such use makes void at the option of the owner the lease or other title under which he or she holds, and without any act of the owner causes the right of possession to revert and vest in such owner, who may without process of law make immediate entry upon the premises. [2011 c 336 § 215; 1979 c 1 § 17 (Initiative Measure No. 335, approved November 8, 1977).]

7.48.100 Moral nuisance—Immunity of certain motion picture theatre employees. The provisions of any criminal statutes with respect to the exhibition of, or the possession with the intent to exhibit, any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his or her employment, if such projectionist, usher, or ticket taker (1) has no financial interest in the place wherein he or she is so employed, other than his or her salary, and (2) freely and willingly gives testimony regarding such employment in any judicial proceedings brought under RCW 7.48.050 through 7.48.100 as now or hereafter amended, including pretrial discovery proceedings incident thereto, when and if such is requested, and upon being granted immunity by the trial judge sitting in such matters. [2011 c 336 § 216; 1979 c 1 § 19 (Initiative Measure No. 335, approved November 8, 1977); 1927 c 94 § 2; 1913 c 127 § 6; RRS § 946-6.]

7.48.110 Houses of lewdness, assignation or prostitution may be abated—Voluntary abatement. If the owner of the building in which a nuisance is found to be maintained, appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the clerk in the full value of

the property to be ascertained by the court, conditioned that he or she will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court or judge may, if satisfied of his or her good faith, order the premises, closed under the order of abatement, to be delivered to said owner, and said order closing the building canceled. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject by law. [2011 c 336 § 217; 1927 c 94 § 3; 1913 c 127 § 7; RRS § 946-7.]

7.48.210 Civil action, who may maintain. A private person may maintain a civil action for a public nuisance, if it is specially injurious to himself or herself but not otherwise. [2011 c 336 § 218; Code 1881 § 1243; 1875 p 80 § 9; RRS § 9921.]

7.48.230 Public nuisance—Abatement. Any person may abate a public nuisance which is specially injurious to him or her by removing, or if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. [2011 c 336 § 219; Code 1881 § 1245; 1875 p 80 § 11; RRS § 9923.]

7.48.270 Stay of warrant. Instead of issuing such warrant, the court may order the same to be stayed upon motion of the defendant, and upon his or her entering into a bond in such sum and with such surety as the court may direct to the state, conditioned either that the defendant will discontinue said nuisance, or that within a time limited by the court, and not exceeding six months, he or she will cause the same to be abated and removed, as either is directed by the court, and upon his or her default to perform the condition of his or her bond, the same shall be forfeited, and the court, upon being satisfied of such default, may order such warrant forthwith to issue, and an order to show cause why judgment should not be entered against the sureties of said bond. [2011 c 336 § 220; 1957 c 45 § 3; Code 1881 § 1251; 1875 p 81 § 17; RRS § 9927.]

Chapter 7.52 RCW

PARTITION

Sections

7.52.030	Lien creditors as parties defendant.
7.52.060	Answer—Contents.
7.52.120	Costs.
7.52.160	Clerk's certificate of unsatisfied judgment liens.
7.52.180	Notice to lienholders.
7.52.190	Proceedings and report of referee.
7.52.200	Exceptions to report—Service of notice on absentee.
7.52.290	Referee may take security.
7.52.390	Purchase by interested party.
7.52.410	Investment in name of clerk.
7.52.430	Duties of clerk in making investments.
7.52.440	Unequal partition—Compensation adjudged.
7.52.450	Infant's share of proceeds to guardian.
7.52.460	Guardian or limited guardian of incompetent or disabled person may receive proceeds—Bond.
7.52.470	Guardian or limited guardian may consent to partition.

7.52.030 Lien creditors as parties defendant. The plaintiff may, at his or her option, make creditors having a

lien upon the property or any portion thereof, other than by a judgment or decree, defendants in the suit. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien. [2011 c 336 § 221; Code 1881 § 554; 1877 p 117 § 559; 1869 p 133 § 507; RRS § 840.]

7.52.060 Answer—Contents. The defendant shall set forth in his or her answer, the nature, and extent of his or her interest in the property, and if he or she be a lien creditor, how such lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security. [2011 c 336 § 222; Code 1881 § 557; 1877 p 118 § 562; 1869 p 134 § 510; RRS § 843.]

7.52.120 Costs. The expenses of the referees, including those of a surveyor and his or her assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff and may be allowed as costs. [2011 c 336 § 223; Code 1881 § 563; 1877 p 119 § 568; 1869 p 135 § 516; RRS § 849.]

7.52.160 Clerk's certificate of unsatisfied judgment liens. If an order of sale be made before the distribution of the proceeds thereof, the plaintiff shall produce to the court the certificate of the clerk of the county where the property is situated, showing the liens remaining unsatisfied, if any, by judgment or decree upon the property or any portion thereof, and unless he or she do so the court shall order a referee to ascertain them. [2011 c 336 § 224; 1957 c 51 § 13; Code 1881 § 567; 1877 p 119 § 570; 1869 p 136 § 520; RRS § 853.]

7.52.180 Notice to lienholders. The plaintiff must cause a notice to be served at least twenty days before the time for appearance on each person having such lien by judgment or decree, to appear before the referee at a specified time and place to make proof by his or her own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely on his or her judgment or decree. [2011 c 336 § 225; Code 1881 § 569; 1877 p 120 § 572; 1869 p 136 § 522; RRS § 855.]

7.52.190 Proceedings and report of referee. The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts due thereon, or secured thereby, and their priority respectively, and whether contingent or absolute. He or she shall attach to his or her report the proof of service of the notices and the evidence before him or her. [2011 c 336 § 226; Code 1881 § 570; 1877 p 120 § 573; 1869 p 136 § 523; RRS § 856.]

7.52.200 Exceptions to report—Service of notice on absentee. The report of the referee may be excepted to by either party to the suit, or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the state, or his or her resi-

dence therein be unknown, and that fact appear by affidavit, the court or judge thereof may by order direct that service of the notice may be made upon his or her agent or attorney of record, or by publication thereof, for such time and in such manner as the order may prescribe. [2011 c 336 § 227; Code 1881 § 571; 1877 p 120 § 574; 1869 p 137 § 524; RRS § 857.]

7.52.290 Referee may take security. The referees may take separate mortgages, and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his or her successors in office; and for the shares of any known owner of full age, in the name of such owner. [2011 c 336 § 228; Code 1881 § 580; 1877 p 121 § 584; 1869 p 138 § 533; RRS § 866.]

7.52.390 Purchase by interested party. When a party entitled to a share of the property, or an encumbrancer entitled to have his or her lien paid out of the sale, becomes a purchaser, the referees may take his or her receipt for so much of the proceeds of the sale as belong to him or her. [2011 c 336 § 229; Code 1881 § 590; 1877 p 123 § 595; 1869 p 140 § 544; RRS § 876.]

7.52.410 Investment in name of clerk. When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his or her successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court. [2011 c 336 § 230; Code 1881 § 592; 1877 p 123 § 597; 1869 p 141 § 546; RRS § 878.]

7.52.430 Duties of clerk in making investments. The clerk in whose name a security is taken, or by whom an investment is made, and his or her successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his or her office all securities taken and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him or her thereon, and the disposition thereof. [2011 c 336 § 231; Code 1881 § 594; 1877 p 123 § 599; 1869 p 141 § 548; RRS § 880.]

7.52.440 Unequal partition—Compensation adjudged. When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of the inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he or she has personal property sufficient for that purpose, and that his or her interest will be promoted thereby. [2011 c 336 § 232; Code 1881 § 595; 1877 p 124 § 600; 1869 p 141 § 549; RRS § 881.]

7.52.450 Infant's share of proceeds to guardian. When the share of an infant is sold, the proceeds of the sale

may be paid by the referees making the sale, to his or her general guardian, or the special guardian appointed for him or her in the suit, upon giving the security required by law, or directed by order of the court. [2011 c 336 § 233; Code 1881 § 596; 1877 p 124 § 601; 1869 p 142 § 550; RRS § 882.]

7.52.460 Guardian or limited guardian of incompetent or disabled person may receive proceeds—Bond. The guardian or limited guardian who may be entitled to the custody and management of the estate of an incompetent or disabled person adjudged incapable of conducting his or her own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his or her share of the proceeds of such real property from the referees, on executing a bond with sufficient sureties, approved by the judge of the court, conditioned that he or she faithfully discharge the trust reposed in him or her, and will render a true and just account to the person entitled, or to his or her legal representative. [2011 c 336 § 234; 1977 ex.s. c 80 § 9; Code 1881 § 597; 1877 p 124 § 602; 1869 p 142 § 551; RRS § 883.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

7.52.470 Guardian or limited guardian may consent to partition. The general guardian of an infant, and the guardian or limited guardian entitled to the custody and management of the estate of an incompetent or disabled person adjudged incapable of conducting his or her own affairs, who is interested in real estate held in common or in any other manner, so as to authorize his or her being made a party to an action for the partition thereof, may consent to a partition without suit and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his or her behalf to the owners of the shares or parts to which they may respectively be entitled, and upon an order of the court. [2011 c 336 § 235; 1977 ex.s. c 80 § 10; Code 1881 § 598; 1877 p 124 § 603; 1869 p 142 § 552; RRS § 884.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Chapter 7.56 RCW QUO WARRANTO

Sections

7.56.010	Against whom information may be filed.
7.56.020	Who may file.
7.56.040	Information for usurping office—Requisites—Damages.
7.56.060	Judgment.
7.56.070	Judgment for relator—Ouster of defendant.
7.56.090	Action for damages—Limitation.
7.56.100	Judgment of ouster or forfeiture.
7.56.130	Costs.
7.56.140	Information to annul patent, certificate, or deed.
7.56.150	Proceedings to annul.

7.56.010 Against whom information may be filed. An information may be filed against any person or corporation in the following cases:

(1) When any person shall usurp, intrude upon, or unlawfully hold or exercise any public office or franchise within the state, or any office in any corporation created by the authority of the state.

(2) When any public officer shall have done or suffered any act, which, by the provisions of law, shall work a forfeiture of his or her office.

(3) When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons in order to try their respective rights to the office or franchise.

(4) When any association or number of persons shall act within this state as a corporation, without being legally incorporated.

(5) Or where any corporation do, or omit acts which amount to a surrender or a forfeiture of their rights and privileges as a corporation, or where they exercise powers not conferred by law. [2011 c 336 § 236; Code 1881 § 702; 1877 p 143 § 706; 1854 p 216 § 468; RRS § 1034.]

7.56.020 Who may file. The information may be filed by the prosecuting attorney in the superior court of the proper county, upon his or her own relation, whenever he or she shall deem it his or her duty to do so, or shall be directed by the court or other competent authority, or by any other person on his or her own relation, whenever he or she claims an interest in the office, franchise, or corporation which is the subject of the information. [2011 c 336 § 237; Code 1881 § 703; 1877 p 143 § 707; 1854 p 216 § 469; RRS § 1035.]

7.56.040 Information for usurping office—Requisites—Damages. Whenever an information shall be filed against a person for usurping an office, by the prosecuting attorney, he or she shall also set forth therein the name of the person rightfully entitled to the office, with an averment of his or her right thereto; and when filed by any other person he or she shall show his or her interest in the matter, and he or she may claim the damages he or she has sustained. [2011 c 336 § 238; Code 1881 § 705; 1877 p 143 § 709; 1854 p 216 § 471; RRS § 1037.]

7.56.060 Judgment. In every case wherein the right to an office is contested, judgment shall be rendered upon the rights of the parties, and for the damages the relator may show himself or herself entitled to, if any, at the time of the judgment. [2011 c 336 § 239; Code 1881 § 707; 1877 p 144 § 711; 1854 p 217 § 473; RRS § 1039.]

7.56.070 Judgment for relator—Ouster of defendant. If judgment be rendered in favor of the relator, he or she shall proceed to exercise the functions of the office, after he or she has been qualified as required by law, and the court shall order the defendant to deliver over all books and papers in his or her custody or within his or her power, belonging to the office from which he or she has been ousted. [2011 c 336 § 240; Code 1881 § 708; 1877 p 144 § 712; 1854 p 217 § 474; RRS § 1040.]

7.56.090 Action for damages—Limitation. When judgment is rendered in favor of the plaintiff, he or she may, if he or she has not claimed his or her damages in the information, have his or her action for the damages at any time within one year after the judgment. [2011 c 336 § 241; Code

1881 § 710; 1877 p 144 § 714; 1854 p 217 § 476; RRS § 1042.]

7.56.100 Judgment of ouster or forfeiture. Whenever any defendant shall be found guilty of any usurpation of or intrusion into, or unlawfully exercising any office or franchise within this state, or any office in any corporation created by the authority of this state, or when any public officer thus charged shall be found guilty of having done or suffered any act which by the provisions of the law shall work a forfeiture of his or her office, or when any association or number of persons shall be found guilty of having acted as a corporation without having been legally incorporated, the court shall give judgment of ouster against the defendant or defendants, and exclude him, her, or them from the office, franchise, or corporate rights, and in case of corporations that the same shall be dissolved, and the court shall adjudge costs in favor of the plaintiff. [2011 c 336 § 242; Code 1881 § 711; 1877 p 144 § 715; 1854 p 217 § 478; RRS § 1043.]

7.56.130 Costs. When an information is filed by the prosecuting attorney, he or she shall not be liable for the costs, but when it is filed upon the relation of a private person such person shall be liable for costs unless the same are adjudged against the defendant. [2011 c 336 § 243; Code 1881 § 714; 1877 p 145 § 718; 1854 p 218 § 481; RRS § 1046.]

7.56.140 Information to annul patent, certificate, or deed. An information may be prosecuted for the purpose of annulling or vacating any letters patent, certificate, or deed, granted by the proper authorities of this state, when there is reason to believe that the same were obtained by fraud or through mistake or ignorance of a material fact, or when the patentee or those claiming under him or her have done or omitted an act in violation of the terms on which the letters, deeds or certificates were granted, or have by any other means forfeited the interests acquired under the same. [2011 c 336 § 244; Code 1881 § 715; 1877 p 145 § 719; 1854 p 218 § 482; RRS § 1047.]

7.56.150 Proceedings to annul. In such cases, the information may be filed by the prosecuting attorney upon his or her relation, or by any private person upon his or her relation showing his or her interest in the subject matter; and the subsequent proceedings, judgment of the court and awarding of costs, shall conform to the above provisions, and such letters patent, deed, or certificate shall be annulled or sustained, according to the right of the case. [2011 c 336 § 245; Code 1881 § 716; 1877 p 145 § 720; 1854 p 218 § 483; RRS § 1048.]

Chapter 7.60 RCW RECEIVERS

Sections

7.60.025	Appointment of receiver. (<i>Effective until July 1, 2012.</i>)
7.60.025	Appointment of receiver. (<i>Effective July 1, 2012.</i>)
7.60.055	Powers of the court.
7.60.090	Schedules of property and liabilities—Inventory of property—Appraisals.

7.60.110	Automatic stay of certain proceedings.
7.60.130	Executory contracts and unexpired leases.
7.60.190	Participation of creditors and parties in interest in receivership proceeding—Effect of court orders on nonparties.
7.60.200	Notice to creditors and other parties in interest.
7.60.230	Priorities.
7.60.260	Receiver's disposition of property—Sales free and clear.

7.60.025 Appointment of receiver. (Effective until July 1, 2012.) (1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, after commencement of any judicial action or nonjudicial proceeding to foreclose upon any lien against or for forfeiture of any interest in real or personal property, on application of any person, when the interest in the property that is the subject of such an action or proceeding of the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action or proceeding is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property. For purposes of this subsection (1)(b), a judicial action is commenced as provided in superior court civil rule 3(a), a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8), and a proceeding for forfeiture is commenced under chapter 61.30 RCW upon the recording of the notice of intent to forfeit described in RCW 61.30.060;

(c) After judgment, in order to give effect to the judgment;

(d) To dispose of property according to provisions of a judgment dealing with its disposition;

(e) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment

debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

(g) Upon an attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction, or where the abandoned property's owner has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;

(h) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;

(i) In an action against any person who is not an individual if the object of the action is the dissolution of that person, or if that person has been dissolved, or if that person is insolvent or is not generally paying the person's debts as those debts become due unless they are the subject of bona fide dispute, or if that person is in imminent danger of insolvency;

(j) In accordance with RCW 7.08.030 (4) and (6), in cases in which a general assignment for the benefit of creditors has been made;

(k) In quo warranto proceedings under chapter 7.56 RCW;

(l) As provided under RCW 11.64.022;

(m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.430 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW 19.105.470 with respect to persons engaged in the business of camping resorts;

(n) In an action under RCW 18.44.470 or 18.44.490 in the case of persons engaged in the business of escrow agents;

(o) Upon a petition with respect to a nursing home in accordance with and subject to receivership provisions under chapter 18.51 RCW;

(p) Under RCW 19.40.071(3), in connection with a proceeding for relief with respect to a transfer fraudulent as to a creditor or creditors;

(q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;

(r) In an action by the attorney general or by a prosecuting attorney under RCW 19.110.160 with respect to a seller of business opportunities;

(s) In an action by the director of financial institutions under RCW 21.20.390 in cases involving actual or threatened violations of the securities act of Washington or under RCW 21.30.120 in cases involving actual or threatened violations of chapter 21.30 RCW with respect to certain businesses and transactions involving commodities;

(t) In an action for or relating to dissolution of a business corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or 23B.14.320, for dissolution of a nonprofit corporation under RCW 24.03.271, for dissolution of a mutual corporation under RCW 24.06.305, or in any other

action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;

(u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;

(v) Under RCW 25.05.215, in aid of a charging order with respect to a partner's interest in a partnership;

(w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030, in the case of a bank or trust company or, under and subject to RCW 32.24.070 through 32.24.090, in the case of a mutual savings bank;

(x) Under and subject to RCW 31.12.637 and 31.12.671 through 31.12.724, in the case of credit unions;

(y) Upon the application of the director of financial institutions under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable to agricultural lenders, under RCW 31.40.120 in actions to enforce chapter 31.40 RCW applicable to entities engaged in federally guaranteed small business loans, under RCW 31.45.160 in actions to enforce chapter 31.45 RCW applicable to persons licensed as check cashers or check sellers, or under RCW 19.230.230 in actions to enforce chapter 19.230 RCW applicable to persons licensed under the uniform money services act;

(z) Under RCW 35.82.090 or 35.82.180, with respect to a housing project;

(aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce rights under any revenue bonds issued for the purpose of financing industrial development facilities or bonds of the Washington state housing finance commission, or any financing document securing any such bonds;

(bb) Under and subject to RCW 43.70.195, in an action by the secretary of health or by a local health officer with respect to a public water system;

(cc) As contemplated by RCW 61.24.030, with respect to real property that is the subject of nonjudicial foreclosure proceedings under chapter 61.24 RCW;

(dd) As contemplated by RCW 61.30.030(3), with respect to real property that is the subject of judicial or nonjudicial forfeiture proceedings under chapter 61.30 RCW;

(ee) Under RCW 64.32.200(2), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter 64.32 RCW. For purposes of this subsection (1)(ee), a judicial action is commenced as provided in superior court civil rule 3(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(ff) Under RCW 64.34.364(10), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units. For purposes of this subsection (1)(ff), a judicial action is commenced as provided in superior court civil rule (3)(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(gg) Upon application of the attorney general under RCW 64.36.220(3), in aid of any writ or order restraining or enjoining violations of chapter 64.36 RCW applicable to timeshares;

(hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment or performance of municipal bonds issued with respect to facilities used to abate, control, or prevent pollution;

(ii) Upon the application of the department of social and health services under RCW 74.42.580, in cases involving nursing homes;

(jj) Upon the application of the utilities and transportation commission under RCW 80.28.040, with respect to a water company that has failed to comply with an order of such commission within the time deadline specified therein;

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation district;

(ll) Upon application of the attorney general or the department of licensing, in any proceeding that either of them are authorized by statute to bring to enforce Title 18 or 19 RCW; the securities act of Washington, chapter 21.20 RCW; the Washington commodities act, chapter 21.30 RCW; the land development act, chapter 58.19 RCW; or under chapter 64.36 RCW relating to the regulation of timeshares;

(mm) Upon application of the director of financial institutions in any proceeding that the director of financial institutions is authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

(nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

(2) The superior courts of this state shall appoint as receiver of property located in this state a person who has been appointed by a federal or state court located elsewhere as receiver with respect to the property specifically or with respect to the owner's property generally, upon the application of the person or of any party to that foreign proceeding, and following the appointment shall give effect to orders, judgments, and decrees of the foreign court affecting the property in this state held by the receiver, unless the court determines that to do so would be manifestly unjust or inequitable. The venue of such a proceeding may be any county in which the person resides or maintains any office, or any county in which any property over which the receiver is to be appointed is located at the time the proceeding is commenced.

(3) At least seven days' notice of any application for the appointment of a receiver shall be given to the owner of property to be subject thereto and to all other parties in the action, and to other parties in interest as the court may require. If any execution by a judgment creditor under Title 6 RCW or any application by a judgment creditor for the appointment of a receiver, with respect to property over which the receiver's appointment is sought, is pending in any other action at the time the application is made, then notice of the application for the receiver's appointment also shall be given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

(4) The order appointing a receiver in all cases shall reasonably describe the property over which the receiver is to

take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over all of the owner's property, wherever located.

(5) The court may condition the appointment of a receiver upon the giving of security by the person seeking the receiver's appointment, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained. [2011 c 34 § 1; 2010 c 212 § 4; 2006 c 52 § 1; 2004 c 165 § 4.]

Application—Effective date—2010 c 212: See notes following RCW 24.03.266.

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

7.60.025 Appointment of receiver. (Effective July 1, 2012.) (1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, after commencement of any judicial action or nonjudicial proceeding to foreclose upon any lien against or for forfeiture of any interest in real or personal property, on application of any person, when the interest in the property that is the subject of such an action or proceeding of the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action or proceeding is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property. For purposes of this subsection (1)(b), a judicial action is commenced as provided in superior court civil rule 3(a), a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8), and a proceeding for forfeiture is commenced under chapter 61.30 RCW upon the

recording of the notice of intent to forfeit described in RCW 61.30.060;

(c) After judgment, in order to give effect to the judgment;

(d) To dispose of property according to provisions of a judgment dealing with its disposition;

(e) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

(g) Upon an attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction, or where the abandoned property's owner has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;

(h) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;

(i) In an action against any person who is not an individual if the object of the action is the dissolution of that person, or if that person has been dissolved, or if that person is insolvent or is not generally paying the person's debts as those debts become due unless they are the subject of bona fide dispute, or if that person is in imminent danger of insolvency;

(j) In accordance with RCW 7.08.030 (4) and (6), in cases in which a general assignment for the benefit of creditors has been made;

(k) In quo warranto proceedings under chapter 7.56 RCW;

(l) As provided under RCW 11.64.022;

(m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.430 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW 19.105.470 with respect to persons engaged in the business of camping resorts;

(n) In an action under RCW 18.44.470 or 18.44.490 in the case of persons engaged in the business of escrow agents;

(o) Upon a petition with respect to a nursing home in accordance with and subject to receivership provisions under chapter 18.51 RCW;

(p) Under RCW 19.40.071(3), in connection with a proceeding for relief with respect to a transfer fraudulent as to a creditor or creditors;

(q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;

(r) In an action by the attorney general or by a prosecuting attorney under RCW 19.110.160 with respect to a seller of business opportunities;

(s) In an action by the director of financial institutions under RCW 21.20.390 in cases involving actual or threatened violations of the securities act of Washington or under RCW 21.30.120 in cases involving actual or threatened violations of chapter 21.30 RCW with respect to certain businesses and transactions involving commodities;

(t) In an action for or relating to dissolution of a business corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or 23B.14.320, for dissolution of a nonprofit corporation under RCW 24.03.271, for dissolution of a mutual corporation under RCW 24.06.305, or in any other action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;

(u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;

(v) Under RCW 25.05.215, in aid of a charging order with respect to a partner's interest in a partnership;

(w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030, in the case of a bank or trust company or, under and subject to RCW 32.24.070 through 32.24.090, in the case of a mutual savings bank;

(x) Under and subject to RCW 31.12.637 and 31.12.671 through 31.12.724, in the case of credit unions;

(y) Upon the application of the director of financial institutions under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable to agricultural lenders, under RCW 31.40.120 in actions to enforce chapter 31.40 RCW applicable to entities engaged in federally guaranteed small business loans, under RCW 31.45.160 in actions to enforce chapter 31.45 RCW applicable to persons licensed as check cashers or check sellers, or under RCW 19.230.230 in actions to enforce chapter 19.230 RCW applicable to persons licensed under the uniform money services act;

(z) Under RCW 35.82.090 or 35.82.180, with respect to a housing project;

(aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce rights under any revenue bonds issued for the purpose of financing industrial development facilities or bonds of the Washington state housing finance commission, or any financing document securing any such bonds;

(bb) Under and subject to RCW 43.70.195, in an action by the secretary of health or by a local health officer with respect to a public water system;

(cc) As contemplated by RCW 61.24.030, with respect to real property that is the subject of nonjudicial foreclosure proceedings under chapter 61.24 RCW;

(dd) As contemplated by RCW 61.30.030(3), with respect to real property that is the subject of judicial or nonjudicial forfeiture proceedings under chapter 61.30 RCW;

(ee) Under RCW 64.32.200(2), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter

64.32 RCW. For purposes of this subsection (1)(ee), a judicial action is commenced as provided in superior court civil rule 3(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(ff) Under RCW 64.34.364(10), in an action or proceeding commenced under chapter 61.12 or 61.24 RCW by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units. For purposes of this subsection (1)(ff), a judicial action is commenced as provided in superior court civil rule (3)(a) and a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the service of notice of default described in RCW 61.24.030(8);

(gg) Upon application of the attorney general under RCW 64.36.220(3), in aid of any writ or order restraining or enjoining violations of chapter 64.36 RCW applicable to timeshares;

(hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment or performance of municipal bonds issued with respect to facilities used to abate, control, or prevent pollution;

(ii) Upon the application of the department of social and health services under RCW 74.42.580, in cases involving nursing homes;

(jj) Upon the application of the utilities and transportation commission under RCW 80.28.040, with respect to a water company or wastewater company that has failed to comply with an order of such commission within the time deadline specified therein;

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation district;

(ll) Upon application of the attorney general or the department of licensing, in any proceeding that either of them are authorized by statute to bring to enforce Title 18 or 19 RCW; the securities act of Washington, chapter 21.20 RCW; the Washington commodities act, chapter 21.30 RCW; the land development act, chapter 58.19 RCW; or under chapter 64.36 RCW relating to the regulation of timeshares;

(mm) Upon application of the director of financial institutions in any proceeding that the director of financial institutions is authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

(nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

(2) The superior courts of this state shall appoint as receiver of property located in this state a person who has been appointed by a federal or state court located elsewhere as receiver with respect to the property specifically or with respect to the owner's property generally, upon the application of the person or of any party to that foreign proceeding, and following the appointment shall give effect to orders, judgments, and decrees of the foreign court affecting the property in this state held by the receiver, unless the court determines that to do so would be manifestly unjust or inequitable. The venue of such a proceeding may be any county in which the person resides or maintains any office, or any county in which any property over which the receiver is to be appointed is located at the time the proceeding is commenced.

(3) At least seven days' notice of any application for the appointment of a receiver must be given to the owner of property to be subject thereto and to all other parties in the action, and to other parties in interest as the court may require. If any execution by a judgment creditor under Title 6 RCW or any application by a judgment creditor for the appointment of a receiver, with respect to property over which the receiver's appointment is sought, is pending in any other action at the time the application is made, then notice of the application for the receiver's appointment also must be given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

(4) The order appointing a receiver in all cases must reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over all of the owner's property, wherever located.

(5) The court may condition the appointment of a receiver upon the giving of security by the person seeking the receiver's appointment, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained. [2011 c 214 § 27; 2011 c 34 § 1; 2010 c 212 § 4; 2006 c 52 § 1; 2004 c 165 § 4.]

Reviser's note: This section was amended by 2011 c 34 § 1 and by 2011 c 214 § 27, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

Application—Effective date—2010 c 212: See notes following RCW 24.03.266.

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

7.60.055 Powers of the court. (1) Except as otherwise provided for by this chapter, the court in all cases has exclu-

sive authority over the receiver, and the exclusive possession and right of control with respect to all real property and all tangible and intangible personal property with respect to which the receiver is appointed, wherever located, and the exclusive jurisdiction to determine all controversies relating to the collection, preservation, application, and distribution of all the property, and all claims against the receiver arising out of the exercise of the receiver's powers or the performance of the receiver's duties. However, the court does not have exclusive jurisdiction over actions in which a state agency is a party and in which a statute expressly vests jurisdiction or venue elsewhere.

(2) For good cause shown, the court has the power to shorten or expand the time frames specified in this chapter. [2011 c 34 § 2; 2004 c 165 § 7.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

7.60.090 Schedules of property and liabilities—Inventory of property—Appraisals.

(1) In the event of a general assignment of property for the benefit of creditors under chapter 7.08 RCW, the assignment shall have annexed as schedule A a true list of all of the person's known creditors, their mailing addresses, the amount and nature of their claims, and whether their claims are disputed; and as schedule B a true list of all property of the estate, including the estimated liquidation value and location of the property and, if real property, a legal description thereof, as of the date of the assignment.

(2) In all other cases, within thirty-five days after the date of appointment of a general receiver, the receiver shall file as schedule A a true list of all of the known creditors and applicable regulatory and taxing agencies of the person over whose assets the receiver is appointed, their mailing addresses, the amount and nature of their claims, and whether their claims are disputed; and as schedule B a true list of all property of the estate identifiable by the receiver, including the estimated liquidation value and location of the property and, if real property, a legal description thereof, as of the date of appointment of the receiver.

(3) The schedules must be in substantially the following forms:

SCHEDULE A—CREDITOR LIST

1. List all creditors having security interests or liens, showing:

Name	Address	Amount	Collateral	Whether or not disputed
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2. List all wages, salaries, commissions, or contributions to an employee benefit plan owed, showing:

Name	Address	Amount	Whether or not disputed
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3. List all consumer deposits owed, showing:

Name	Address	Amount	Whether or not disputed
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4. List all taxes owed, showing:

Name	Address	Amount	Whether or not disputed
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5. List all unsecured claims, showing:

Name	Address	Amount	Whether or not disputed
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6. List all owners or shareholders, showing:

Name	Address	Percentage of Ownership
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7. List all applicable regulatory agencies, showing:

Name	Address
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SCHEDULE B—LIST OF PROPERTY

List each category of property and for each give approximate value obtainable for the asset on the date of assignment/appointment of the receiver, and address where asset is located.

I. Nonexempt Property

	Description and Location	Liquidation Value on Date of Assignment/Appointment of Receiver
1.	Legal Description and street address of real property, including leasehold interests:	
2.	Fixtures:	
3.	Cash and bank accounts:	
4.	Inventory:	
5.	Accounts receivable:	
6.	Equipment:	
7.	Prepaid expenses, including deposits, insurance, rents, and utilities:	
8.	Other, including loans to third parties, claims, and choses in action:	

II. Exempt Property

Description and Location	Liquidation Value on Date of Assignment/Appointment of Receiver
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I DECLARE under penalty of perjury under the laws of the state of Washington that the foregoing is true, correct, and complete to the best of my knowledge. DATED this . . . day of,, at, state of

.....
[SIGNATURE]

(4) When schedules are filed by a person making a general assignment of property for the benefit of creditors under chapter 7.08 RCW, the schedules shall be duly verified upon oath by such person.

(5) The receiver shall obtain an appraisal or other independent valuation of the property in the receiver’s possession if ordered by the court.

(6) The receiver shall file a complete inventory of the property in the receiver’s possession if ordered by the court. [2011 c 34 § 3; 2004 c 165 § 11.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

7.60.110 Automatic stay of certain proceedings. (1) Except as otherwise ordered by the court, the entry of an order appointing a general receiver or a custodial receiver with respect to all of a person’s property shall operate as a stay, applicable to all persons, of:

(a) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the person over

whose property the receiver is appointed that was or could have been commenced before the entry of the order of appointment, or to recover a claim against the person that arose before the entry of the order of appointment;

(b) The enforcement, against the person over whose property the receiver is appointed or any estate property, of a judgment obtained before the order of appointment;

(c) Any act to obtain possession of estate property from the receiver, or to interfere with, or exercise control over, estate property;

(d) Any act to create, perfect, or enforce any lien or claim against estate property except by exercise of a right of setoff, to the extent that the lien secures a claim against the person that arose before the entry of the order of appointment; or

(e) Any act to collect, assess, or recover a claim against the person that arose before the entry of the order of appointment.

(2) The stay shall automatically expire as to the acts specified in subsection (1)(a), (b), and (e) of this section sixty days after the entry of the order of appointment unless before the expiration of the sixty-day period the receiver, for good

cause shown, obtains an order of the court extending the stay, after notice and a hearing. A person whose action or proceeding is stayed by motion to the court may seek relief from the stay for good cause shown. Any judgment obtained against the person over whose property the receiver is appointed or estate property following the entry of the order of appointment is not a lien against estate property unless the receivership is terminated prior to a conveyance of the property against which the judgment would otherwise constitute a lien.

(3) The entry of an order appointing a receiver does not operate as a stay of:

(a) The continuation of a judicial action or nonjudicial proceeding of the type described in RCW 7.60.025(1) (b), (ee), or (ff), if the action or proceeding was initiated by the party seeking the receiver's appointment;

(b) The commencement or continuation of a criminal proceeding against the person over whose property the receiver is appointed;

(c) The commencement or continuation of an action or proceeding to establish paternity, or to establish or modify an order for alimony, maintenance, or support, or to collect alimony, maintenance, or support under any order of a court;

(d) Any act to perfect, or to maintain or continue the perfection of, an interest in estate property if the interest perfected would be effective against a creditor of the person over whose property the receiver is appointed holding at the time of the entry of the order of appointment either a perfected nonpurchase money security interest under chapter 62A.9A RCW against the property involved, or a lien by attachment, levy, or the like, whether or not such a creditor exists. If perfection of an interest would require seizure of the property involved or the commencement of an action, the perfection shall instead be accomplished by filing, and by serving upon the receiver, or receiver's counsel, if any, notice of the interest within the time fixed by law for seizure or commencement;

(e) The commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power;

(f) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power, or with respect to any licensure of the person over whose property the receiver is appointed;

(g) The exercise of a right of setoff, including but not limited to (i) any right of a commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency to set off a claim for a margin payment or settlement payment arising out of a commodity contract, forward contract, or securities contract against cash, securities, or other property held or due from the commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency to margin, guarantee, secure, or settle the commodity contract, forward contract, or securities contract, and (ii) any right of a swap participant to set off a claim for a payment due to the swap participant under or in connection with a swap agreement against any payment due from the swap participant under or in connection with the swap agreement or against cash, securities, or other property of the debtor held by or due from the swap participant to guarantee, secure, or settle the swap agreement; or

(h) The establishment by a governmental unit of any tax liability and any appeal thereof. [2011 c 34 § 4; 2004 c 165 § 13.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

7.60.130 Executory contracts and unexpired leases.

(1) A general receiver may assume or reject any executory contract or unexpired lease of the person over whose property the receiver is appointed upon order of the court following notice to the other party to the contract or lease upon notice and a hearing. The court may condition assumption or rejection of any executory contract or unexpired lease on the terms and conditions the court believes are just and proper under the particular circumstances of the case. A general receiver's performance of an executory contract or unexpired lease prior to the court's authorization of its assumption or rejection shall not constitute an assumption of the contract or lease, or an agreement by the receiver to assume it, nor otherwise preclude the receiver thereafter from seeking the court's authority to reject it.

(2) Any obligation or liability incurred by a general receiver on account of the receiver's assumption of an executory contract or unexpired lease shall be treated as an expense of the receivership. A general receiver's rejection of an executory contract or unexpired lease shall be treated as a breach of the contract or lease occurring immediately prior to the receiver's appointment; and the receiver's right to possess or use property pursuant to any executory contract or lease shall terminate upon rejection of the contract or lease. The other party to an executory contract or unexpired lease that is rejected by a general receiver may take such steps as may be necessary under applicable law to terminate or cancel the contract or lease. The claim of a party to an executory contract or unexpired lease resulting from a general receiver's rejection of it shall be served upon the receiver in the manner provided for by RCW 7.60.210 within thirty days following the rejection.

(3) A general receiver's power under this section to assume an executory contract or unexpired lease shall not be affected by any provision in the contract or lease that would effect or permit a forfeiture, modification, or termination of it on account of either the receiver's appointment, the financial condition of the person over whose property the receiver is appointed, or an assignment for the benefit of creditors by that person.

(4) A general receiver may not assume an executory contract or unexpired lease of the person over whose property the receiver is appointed without the consent of the other party to the contract or lease if:

(a) Applicable law would excuse a party, other than the person over whose property the receiver is appointed, from accepting performance from or rendering performance to anyone other than the person even in the absence of any provisions in the contract or lease expressly restricting or prohibiting an assignment of the person's rights or the performance of the person's duties;

(b) The contract or lease is a contract to make a loan or extend credit or financial accommodations to or for the benefit of the person over whose property the receiver is appointed, or to issue a security of the person; or

(c) The executory contract or lease expires by its own terms, or under applicable law prior to the receiver's assumption thereof.

(5) A receiver may not assign an executory contract or unexpired lease without assuming it, absent the consent of the other parties to the contract or lease.

(6) If the receiver rejects an executory contract or unexpired lease for:

(a) The sale of real property under which the person over whose property the receiver is appointed is the seller and the purchaser is in possession of the real property;

(b) The sale of a real property timeshare interest under which the person over whose property the receiver is appointed is the seller;

(c) The license of intellectual property rights under which the person over whose property the receiver is appointed is the licensor; or

(d) The lease of real property in which the person over whose property the receiver is appointed is the lessor; then the purchaser, licensee, or lessee may treat the rejection as a termination of the contract, license agreement, or lease, or alternatively, the purchaser, licensee, or lessee may remain in possession in which case the purchaser, licensee, or lessee shall continue to perform all obligations arising thereunder as and when they may fall due, but may offset against any payments any damages occurring on account of the rejection after it occurs. The purchaser of real property in such a case is entitled to receive from the receiver any deed or any other instrument of conveyance which the person over whose property the receiver is appointed is obligated to deliver under the executory contract when the purchaser becomes entitled to receive it, and the deed or instrument has the same force and effect as if given by the person. A purchaser, licensee, or lessee who elects to remain in possession under the terms of this subsection has no rights against the receiver on account of any damages arising from the receiver's rejection except as expressly provided for by this subsection. A purchaser of real property who elects to treat rejection of an executory contract as a termination has a lien against the interest in that real property of the person over whose property the receiver is appointed for the recovery of any portion of the purchase price that the purchaser has paid.

(7) Any contract with the state shall be deemed rejected if not assumed within sixty days of appointment of a general receiver unless the receiver and state agency agree to its assumption or as otherwise ordered by the court for good cause shown.

(8) Nothing in this chapter affects the enforceability of antiassignment prohibitions provided under contract or applicable law. [2011 c 34 § 5; 2004 c 165 § 15.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

7.60.190 Participation of creditors and parties in interest in receivership proceeding—Effect of court orders on nonparties. (1) Creditors and parties in interest to whom written notice of the pendency of the receivership is given in accordance with RCW 7.60.210, and creditors or other persons submitting written claims in the receivership or otherwise appearing and participating in the receivership, are bound by the acts of the receiver with regard to management

and disposition of estate property whether or not they are formally joined as parties.

(2) Any person having a claim against or interest in any estate property or in the receivership proceedings may appear in the receivership, either in person or by an attorney. Appearance must be made by filing a written notice of appearance, including the name and mailing address of the party in interest, and the name and address of the person's attorney, if any, with the clerk, and by serving a copy of the notice upon the receiver and the receiver's attorney of record, if any. The receiver shall maintain a master mailing list of all persons joined as parties in the receivership and of all persons serving and filing notices of appearance in the receivership in accordance with this section. A creditor or other party in interest has a right to be heard with respect to all matters affecting the person, whether or not the person is joined as a party to the action.

(3) Any request for relief against a state agency shall be mailed to or otherwise served on the agency and on the office of the attorney general.

(4) Orders of the court with respect to the treatment of claims and disposition of estate property, including but not limited to orders providing for sales of property free and clear of liens, are effective as to any person having a claim against or interest in the receivership estate and who has actual knowledge of the receivership, whether or not the person receives written notice from the receiver and whether or not the person appears or participates in the receivership.

(5) The receiver shall give not less than ten days' written notice by mail of any examination by the receiver of the person with respect to whose property the receiver has been appointed and to persons who serve and file an appearance in the proceeding.

(6) Persons on the master mailing list are entitled to not less than thirty days' written notice of the hearing of any motion or other proceeding involving any proposed:

(a) Allowance or disallowance of any claim or claims;

(b) Abandonment, disposition, or distribution of estate property, other than an emergency disposition of property subject to eroding value or a disposition of property in the ordinary course of business;

(c) Compromise or settlement of a controversy that might affect the distribution to creditors from the estate;

(d) Compensation of the receiver or any professional employed by the receiver; or

(e) Application for termination of the receivership or discharge of the receiver. Notice of the application shall also be sent to state taxing and applicable regulatory agencies.

Any opposition to any motion to authorize any of the actions under (a) through (e) of this subsection must be filed and served upon the receiver and the receiver's attorney, if any, at least three days before the date of the proposed action. Persons on the master mailing list shall be served with all pleadings or in opposition to any motion. The court may require notice to be given to persons on the master mailing list of additional matters the court deems appropriate. The receiver shall make a copy of the current master mailing list available to any person on that list upon the person's request.

(7) All persons duly notified by the receiver of any hearing to approve or authorize an action or a proposed action by the receiver is bound by any order of the court with respect to

the action, whether or not the persons have appeared or objected to the action or proposed action or have been joined formally as parties to the particular action.

(8) Whenever notice is not specifically required to be given under this chapter, the court may consider motions and grant or deny relief without notice or hearing, if it appears that no person joined as a party or who has appeared in the receivership would be prejudiced or harmed by the relief requested. [2011 c 34 § 6; 2004 c 165 § 21.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

7.60.200 Notice to creditors and other parties in interest. (1) A general receiver shall give notice of the receivership by publication in a newspaper of general circulation published in the county or counties in which estate property is known to be located once a week for three consec-

utive weeks, the first notice to be published within thirty days after the date of appointment of the receiver; and by mailing notice to all known creditors and other known parties in interest within thirty days after the date of appointment of the receiver. The notice of the receivership shall include the date of appointment of the receiver; the name of the court and the case number; the last day on which claims may be filed with the court and mailed to or served upon the receiver; and the name and address of the debtor, the receiver, and the receiver’s attorney, if any. For purposes of this section, all intangible property of a person is deemed to be located in the county in which an individual owner thereof resides, or in which any entity owning the property maintains its principal administrative offices.

(2) The notice of the receivership shall be in substantially the following form:

IN THE SUPERIOR COURT, IN AND FOR
_____ COUNTY, WASHINGTON

[Case Name] _____)

Case No. _____

)
)
)
)
)
)

NOTICE OF RECEIVERSHIP

TO CREDITORS AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that a receiver was appointed for _____, whose last known address is _____, on _____, ____.

YOU ARE HEREBY FURTHER NOTIFIED that in order to receive any dividend in this proceeding you must file proof of claim with the court within 30 days after the date of this notice. If you are a state agency, you must file proof of claim with the receiver within 180 days after the date of this notice. A copy of your claim must also be either mailed to or served upon the receiver.

RECEIVER

Attorney for receiver (if any): _____

Address: _____

[2011 c 34 § 7; 2004 c 165 § 22.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

7.60.230 Priorities. (1) Allowed claims in a general receivership shall receive distribution under this chapter in the order of priority under (a) through (h) of this subsection and, with the exception of (a) and (c) of this subsection, on a pro rata basis.

(a) Creditors with liens on property of the estate, which liens are duly perfected under applicable law, shall receive the proceeds from the disposition of their collateral. However, the receiver may recover from property securing an allowed secured claim the reasonable, necessary expenses of preserving, protecting, or disposing of the property to the extent of any benefit to the creditors. If and to the extent that the proceeds are less than the amount of a creditor’s allowed claim or a creditor’s lien is avoided on any basis, the creditor is an unsecured claim under (h) of this subsection. Secured claims shall be paid from the proceeds in accordance with their respective priorities under otherwise applicable law.

(b) Actual, necessary costs and expenses incurred during the administration of the estate, other than those expenses allowable under (a) of this subsection, including allowed fees and reimbursement of reasonable charges and expenses of the receiver and professional persons employed by the receiver under RCW 7.60.180. Notwithstanding (a) of this subsection, expenses incurred during the administration of the estate have priority over the secured claim of any creditor obtaining or consenting to the appointment of the receiver.

(c) Creditors with liens on property of the estate, which liens have not been duly perfected under applicable law, shall receive the proceeds from the disposition of their collateral if and to the extent that unsecured claims are made subject to those liens under applicable law.

(d) Claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan, earned by the claimant within

one hundred eighty days of the date of appointment of the receiver or the cessation of the estate's business, whichever occurs first, but only to the extent of ten thousand nine hundred fifty dollars.

(e) Allowed unsecured claims, to the extent of two thousand four hundred twenty-five dollars for each individual, arising from the deposit with the person over whose property the receiver is appointed before the date of appointment of the receiver of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by individuals that were not delivered or provided.

(f) Claims for a support debt as defined in RCW 74.20A.020(10), but not to the extent that the debt (i) is assigned to another entity, voluntarily, by operation of law, or otherwise; or (ii) includes a liability designated as a support obligation unless that liability is actually in the nature of a support obligation.

(g) Unsecured claims of governmental units for taxes which accrued prior to the date of appointment of the receiver.

(h) Other unsecured claims.

(2) If all of the classes under subsection (1) of this section have been paid in full, any residue shall be paid to the person over whose property the receiver is appointed. [2011 c 34 § 8; 2004 c 165 § 25.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

7.60.260 Receiver's disposition of property—Sales free and clear. (1) The receiver, with the court's approval after notice and a hearing, may use, sell, or lease estate property other than in the ordinary course of business. Except in the case of a leasehold estate with a remaining term of less than two years or a vendor's interest in a real estate contract, estate property consisting of real property may not be sold by a custodial receiver other than in the ordinary course of business.

(2) The court may order that a general receiver's sale of estate property either (a) under subsection (1) of this section, or (b) consisting of real property which the debtor intended to sell in its ordinary course of business be effected free and clear of liens and of all rights of redemption, whether or not the sale will generate proceeds sufficient to fully satisfy all claims secured by the property, unless either:

(i) The property is real property used principally in the production of crops, livestock, or aquaculture, or the property is a homestead under RCW 6.13.010(1), and the owner of the property has not consented to the sale following the appointment of the receiver; or

(ii) The owner of the property or a creditor with an interest in the property serves and files a timely opposition to the receiver's sale, and the court determines that the amount likely to be realized by the objecting person from the receiver's sale is less than the person would realize within a reasonable time in the absence of the receiver's sale.

Upon any sale free and clear of liens authorized by this section, all security interests and other liens encumbering the property conveyed transfer and attach to the proceeds of the sale, net of reasonable expenses incurred in the disposition of the property, in the same order, priority, and validity as the

liens had with respect to the property immediately before the conveyance. The court may authorize the receiver at the time of sale to satisfy, in whole or in part, any allowed claim secured by the property out of the proceeds of its sale if the interest of any other creditor having a lien against the proceeds of the sale would not thereby be impaired.

(3) At a public sale of property under subsection (1) of this section, a creditor with an allowed claim secured by a lien against the property to be sold may bid at the sale of the property. A secured creditor who purchases the property from a receiver may offset against the purchase price its allowed secured claim against the property, provided that the secured creditor tenders cash sufficient to satisfy in full all secured claims payable out of the proceeds of sale having priority over the secured creditor's secured claim. If the lien or the claim it secures is the subject of a bona fide dispute, the court may order the holder of the claim to provide the receiver with adequate security to assure full payment of the purchase price in the event the lien, the claim, or any part thereof is determined to be invalid or unenforceable.

(4) If estate property includes an interest as a co-owner of property, the receiver shall have the rights and powers of a co-owner afforded by applicable state or federal law, including but not limited to any rights of partition.

(5) The reversal or modification on appeal of an authorization to sell or lease estate property under this section does not affect the validity of a sale or lease under that authorization to an entity that purchased or leased the property in good faith, whether or not the entity knew of the pendency of the appeal, unless the authorization and sale or lease were stayed pending the appeal. [2011 c 34 § 9; 2004 c 165 § 28.]

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

Chapter 7.68 RCW

VICTIMS OF CRIMES— COMPENSATION, ASSISTANCE

Sections

7.68.020	Definitions.
7.68.030	Duties of the director—General provisions—Testimony by medical providers.
7.68.031	Sending notices, orders, warrants to claimants.
7.68.032	Transmission of amounts payable.
7.68.033	Protection of payments—Payment after death—Time limitations for filing—Confinement in institution.
7.68.034	Direct deposit of benefits.
7.68.035	Penalty assessments in addition to fine or bail forfeiture—Distribution—Establishment of crime victim and witness programs in county—Contribution required from cities and towns.
7.68.050	Right of action for damages—Election—Effect of election or recovery—Lien of state.
7.68.060	Applications for benefits—Accrual of rights.
7.68.061	Who not entitled to compensation.
7.68.062	Application for compensation—Physician shall provide assistance.
7.68.063	Beneficiaries' application for compensation.
7.68.064	Application for change in compensation.
7.68.066	Medical examinations required by department—Medical bureau—Disputes.
7.68.070	Benefits—Right to and amount—Limitations.
7.68.071	Determination of permanent total disability.
7.68.072	Aggravation, diminution, or termination of disability.
7.68.073	Reduction in disability compensation—Recovery of overpayments—Notice—Waiver—Application—Adjustments due to federal reductions.
7.68.074	Compensation for loss of or damage to clothing or footwear.
7.68.075	Marital status—Payment for or on account of children.

7.68.076	Proof of contribution made by deceased victim.
7.68.077	Nonresident alien beneficiary.
7.68.080	Reimbursement of costs for transportation, medical services, counseling—Medical examinations—Regulatory inspection program.
7.68.085	Cap on medical benefits—Alternative programs. (<i>Effective until July 1, 2015.</i>)
7.68.085	Cap on medical benefits—Alternative programs. (<i>Effective July 1, 2015.</i>)
7.68.092	Health care professionals to maintain proper credentials and educational standards—Standards for treatment.
7.68.093	Medical examinations—Department to monitor quality and objectivity.
7.68.094	Medical examinations—Refusal to submit—Travel expenses—Compensation for time lost.
7.68.095	Extent and duration of treatment.
7.68.096	Medical providers—Failure to report or comply as required.
7.68.100	Repealed.
7.68.101	Duties of attending physician or licensed advanced registered nurse practitioner—Medical information.
7.68.111	Payment of compensation after appeal—Enforcement of order—Penalty.
7.68.125	Erroneous or fraudulent payment—Erroneous failure to make payment—Repayment orders—Right to contest orders—Lien.
7.68.126	Recovery of overpayments.
7.68.130	Public or private insurance—Attorneys' fees and costs of victim.
7.68.200	Payment for reenactments of crimes—Contracts—Deposits—Damages.
7.68.240	Payment if no actions pending.

7.68.020 Definitions. The following words and phrases as used in this chapter have the meanings set forth in this section unless the context otherwise requires.

(1) "Accredited school" means a school or course of instruction which is:

(a) Approved by the state superintendent of public instruction, the state board of education, or the state board for community and technical colleges; or

(b) Regulated or licensed as to course content by any agency of the state or under any occupational licensing act of the state, or recognized by the apprenticeship council under an agreement registered with the apprenticeship council pursuant to chapter 49.04 RCW.

(2) "Average monthly wage" means the average annual wage as determined under RCW 50.04.355 as now or hereafter amended divided by twelve.

(3) "Beneficiary" means a husband, wife, registered domestic partner, or child of a victim in whom shall vest a right to receive payment under this chapter, except that a husband or wife of an injured victim, living separate and apart in a state of abandonment, regardless of the party responsible therefor, for more than one year at the time of the injury or subsequently, shall not be a beneficiary. A spouse who has lived separate and apart from the other spouse for the period of two years and who has not, during that time, received or attempted by process of law to collect funds for maintenance, shall be deemed living in a state of abandonment.

(4) "Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the victim, all while under the age of eighteen years, or under the age of twenty-three years while permanently enrolled as a full-time student in an accredited school, and over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap.

(5) "Criminal act" means an act committed or attempted in this state which is: (a) Punishable as a federal offense that is comparable to a felony or gross misdemeanor in this state; (b) punishable as a felony or gross misdemeanor under the laws of this state; (c) an act committed outside the state of Washington against a resident of the state of Washington which would be compensable had it occurred inside this state and the crime occurred in a state which does not have a crime victims' compensation program, for which the victim is eligible as set forth in the Washington compensation law; or (d) trafficking as defined in RCW 9A.40.100. A "criminal act" does not include the following:

(i) The operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law unless:

(A) The injury or death was intentionally inflicted;

(B) The operation thereof was part of the commission of another nonvehicular criminal act as defined in this section;

(C) The death or injury was the result of the operation of a motor vehicle after July 24, 1983, and a preponderance of the evidence establishes that the death was the result of vehicular homicide under RCW 46.61.520, or a conviction of vehicular assault under RCW 46.61.522, has been obtained. In cases where a probable criminal defendant has died in perpetration of vehicular assault or, in cases where the perpetrator of the vehicular assault is unascertainable because he or she left the scene of the accident in violation of RCW 46.52.020 or, because of physical or mental infirmity or disability the perpetrator is incapable of standing trial for vehicular assault, the department may, by a preponderance of the evidence, establish that a vehicular assault had been committed and authorize benefits;

(D) The injury or death was caused by a driver in violation of RCW 46.61.502; or

(E) The injury or death was caused by a driver in violation of RCW 46.61.655(7)(a), failure to secure a load in the first degree;

(ii) Neither an acquittal in a criminal prosecution nor the absence of any such prosecution is admissible in any claim or proceeding under this chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding, except as provided for in (d)(i)(C) of this subsection;

(iii) Evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter is admissible in such claim or proceeding for the limited purpose of proving the criminal character of the acts; and

(iv) Acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct are deemed to be criminal conduct within the meaning of this chapter.

(6) "Department" means the department of labor and industries.

(7) "Financial support for lost wages" means a partial replacement of lost wages due to a temporary or permanent total disability.

(8) "Gainfully employed" means engaging on a regular and continuous basis in a lawful activity from which a person derives a livelihood.

(9) "Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom.

(10) "Invalid" means one who is physically or mentally incapacitated from earning wages.

(11) "Permanent total disability" means loss of both legs, or arms, or one leg and one arm, total loss of eyesight, paralysis, or other condition permanently incapacitating the victim from performing any work at any gainful occupation.

(12) "Private insurance" means any source of recompense provided by contract available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

(13) "Public insurance" means any source of recompense provided by statute, state or federal, available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

(14) "Temporary total disability" means any condition that temporarily incapacitates a victim from performing any type of gainful employment as certified by the victim's attending physician.

(15) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his or her good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "worker" as defined in chapter 51.08 RCW as now or hereafter amended. [2011 c 346 § 101; 2006 c 268 § 1; 2002 c 10 § 3; 2001 c 136 § 1; 1997 c 249 § 1; 1990 c 73 § 1; 1987 c 281 § 6; 1985 c 443 § 11; 1983 c 239 § 4; 1980 c 156 § 2; 1977 ex.s. c 302 § 2; 1975 1st ex.s. c 176 § 1; 1973 1st ex.s. c 122 § 2.]

Intent—2011 c 346: "It is the intent of the legislature that eligible victims of crime who suffer bodily injury or death as a result of violent crime receive benefits under the crime victims' compensation program. To ensure benefits are provided, within funds available, to the largest number of eligible victims, it is imperative to streamline and provide flexibility in the administration of the program. Therefore, the legislature intends to simplify the administration of the benefits and services provided to victims of crime by separating the administration of the benefits and services provided to crime victims from the workers' compensation program under Title 51 RCW. These changes are intended to clarify that the limited funding available to help victims of crimes will be managed to help the largest number of crime victims as possible." [2011 c 346 § 1.]

Retroactive application—2011 c 346: "This act applies retroactively for claims of victims of criminal acts that occurred on or after July 1, 1981, in which a closing order has not been issued or become final and binding as of July 1, 2011, except that victims receiving time loss or loss of support on or before July 1, 2011, may continue to receive time loss at the rate established prior to July 1, 2011. Aggravation applications filed by crime victims who had claims prior to July 1, 2011, will be adjudicated under the laws in effect on or after July 1, 2011. This act does not affect the retroactive application of chapter 122, Laws of 2010." [2011 c 346 § 802.]

Effective date—2011 c 346: "Except for *sections 402 and 503 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 346 § 806.]

***Reviser's note:** Sections 402 and 503 of this act were vetoed by the governor.

Findings—Purpose—2002 c 10: "(1) The legislature finds that:

(a) The trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today;

(b) At least seven hundred thousand persons annually, primarily women and children, are trafficked within or across international borders;

(c) Approximately fifty thousand women and children are trafficked into the United States each year;

(d) Trafficking in persons is not limited to the sex industry, and includes forced labor with significant violations of labor, public health, and

human rights standards worldwide;

(e) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin; and

(f) There are not adequate services and facilities to meet the needs of trafficking victims regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.

(2) The legislature declares that the purpose of this act is to provide a coordinated, humane response for victims of human trafficking through a review of existing programs and clarification of existing options for such victims." [2002 c 10 § 1.]

Legislative intent—"Public or private insurance"—1980 c 156: "Sections 2 through 4 of this 1980 act are required to clarify the legislative intent concerning the phrase "public or private insurance" as used in section 13, chapter 122, Laws of 1973 1st ex. sess. and RCW 7.68.130 which was the subject of *Wagner v. Labor & Indus.*, 92 Wn.2d 463 (1979). It has continuously been the legislative intent to include as "public insurance" both state and federal statutory social welfare and insurance schemes which make available to victims or their beneficiaries recompense as a result of the claimed injury or death, such as but not limited to old age and survivors insurance, medicare, medicaid, benefits under the veterans' benefits act, longshore and harbor workers act, industrial insurance act, law enforcement officers' and firefighters' retirement system act, Washington public employees' retirement system act, teachers' retirement system act, and firemen's relief and pension act. "Private insurance" continuously has been intended to include sources of recompense available by contract, such as but not limited to policies insuring a victim's life or disability." [1980 c 156 § 1.]

Additional notes found at www.leg.wa.gov

7.68.030 Duties of the director—General provisions—Testimony by medical providers. (1) It shall be the duty of the director to establish and administer a program of benefits to innocent victims of criminal acts within the terms and limitations of this chapter. The director may apply for and, subject to appropriation, expend federal funds under Public Law 98-473 and any other federal program providing financial assistance to state crime victim compensation programs. The federal funds shall be deposited in the state general fund and may be expended only for purposes authorized by applicable federal law.

(2) The director shall:

(a) Establish and adopt rules governing the administration of this chapter in accordance with chapter 34.05 RCW;

(b) Regulate the proof of accident and extent thereof, the proof of death, and the proof of relationship and the extent of dependency;

(c) Supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery;

(d) Issue proper receipts for moneys received and certificates for benefits accrued or accruing;

(e) Designate a medical director who is licensed under chapter 18.57 or 18.71 RCW;

(f) Supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, including chiropractic care, and including care provided by licensed advanced registered nurse practitioners, to victims at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, electronic communications, rules, regulations,

and practices for the furnishing of such care and treatment. The medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule. The department may recommend to a victim particular health care services and providers where specialized treatment is indicated or where cost-effective payment levels or rates are obtained by the department, and the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as statewide access to quality service is maintained for injured victims;

(g) In consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, and physician assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to victims. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to victims, whether aliens or other victims, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in RCW 34.05.010(16);

(h) Make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured victims, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it.

(3) The director and his or her authorized assistants:

(a) Have power to issue subpoenas to enforce the attendance and testimony of witnesses and the production and examination of books, papers, photographs, tapes, and records before the department in connection with any claim made to the department or any billing submitted to the department. The superior court has the power to enforce any such subpoena by proper proceedings;

(b)(i) May apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must (A) state that an order is sought pursuant to this subsection; (B) adequately specify the records, documents, or testimony; and (C) declare under oath that an investigation is being conducted for a lawfully autho-

rized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(ii) Where the application under this subsection (3)(b) is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(iii) The director and his or her authorized assistants may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

(4) In all hearings, actions, or proceedings before the department, any physician or licensed advanced registered nurse practitioner having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of the physician or licensed advanced registered nurse practitioner to the patient. [2011 c 346 § 206; 2009 c 479 § 7; 1989 1st ex.s. c 5 § 2; 1985 c 443 § 12; 1973 1st ex.s. c 122 § 3.]

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

Effective date—2009 c 479: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

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

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

7.68.032 Transmission of amounts payable. The department may, at any time, on receipt of written or electronic authorization, transmit amounts payable to a claimant or to the account of such person in a bank or other financial institution regulated by state or federal authority. [2011 c 346 § 202.]

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

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

charge is void unless the transfer is to a financial institution at the request of a victim or other beneficiary and made in accordance with RCW 7.68.034.

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

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

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

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

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

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

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

7.68.035 Penalty assessments in addition to fine or bail forfeiture—Distribution—Establishment of crime victim and witness programs in county—Contribution required from cities and towns. (1)(a) When any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted per-

son a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and two hundred fifty dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

(b) When any juvenile is adjudicated of any offense in any juvenile offense disposition under Title 13 RCW, except as provided in subsection (2) of this section, there shall be imposed upon the juvenile offender a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action that includes one or more adjudications for a felony or gross misdemeanor and seventy-five dollars for each case or cause of action that includes adjudications of only one or more misdemeanors.

(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: RCW 46.61.520, 46.61.522, 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504, 46.52.101, 46.20.410, 46.52.020, 46.10.495, 46.09.480, 46.61.5249, 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180, 46.10.490(2), and 46.09.470(2).

(3) When any person accused of having committed a crime posts bail in superior court pursuant to the provisions of chapter 10.19 RCW and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment, in addition to any other penalty or fine imposed by law, equal to the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the crime.

(4) Such penalty assessments shall be paid by the clerk of the superior court to the county treasurer who shall monthly transmit the money as provided in RCW 10.82.070. Each county shall deposit fifty percent of the money it receives per case or cause of action under subsection (1) of this section and retains under RCW 10.82.070, not less than one and seventy-five one-hundredths percent of the remaining money it retains under RCW 10.82.070 and the money it retains under chapter 3.62 RCW, and all money it receives under subsection (7) of this section into a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. A program shall be considered "comprehensive" only after approval of the department upon application by the county prosecuting attorney. The department shall approve as comprehensive only programs which:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property. It is the intent of the legislature to make funds available only to programs which do not restrict services to victims or witnesses of a particular type or types of crime and that such funds supplement, not supplant, existing local funding levels;

(b) Are administered by the county prosecuting attorney either directly through the prosecuting attorney's office or by contract between the county and agencies providing services to victims of crime;

(c) Make a reasonable effort to inform the known victim or his or her surviving dependents of the existence of this chapter and the procedure for making application for benefits;

(d) Assist victims in the restitution and adjudication process; and

(e) Assist victims of violent crimes in the preparation and presentation of their claims to the department of labor and industries under this chapter.

Before a program in any county west of the Cascade mountains is submitted to the department for approval, it shall be submitted for review and comment to each city within the county with a population of more than one hundred fifty thousand. The department will consider if the county's proposed comprehensive plan meets the needs of crime victims in cases adjudicated in municipal, district or superior courts and of crime victims located within the city and county.

(5) Upon submission to the department of a letter of intent to adopt a comprehensive program, the prosecuting attorney shall retain the money deposited by the county under subsection (4) of this section until such time as the county prosecuting attorney has obtained approval of a program from the department. Approval of the comprehensive plan by the department must be obtained within one year of the date of the letter of intent to adopt a comprehensive program. The county prosecuting attorney shall not make any expenditures from the money deposited under subsection (4) of this section until approval of a comprehensive plan by the department. If a county prosecuting attorney has failed to obtain approval of a program from the department under subsection (4) of this section or failed to obtain approval of a comprehensive program within one year after submission of a letter of intent under this section, the county treasurer shall monthly transmit one hundred percent of the money deposited by the county under subsection (4) of this section to the state treasurer for deposit in the state general fund.

(6) County prosecuting attorneys are responsible to make every reasonable effort to insure that the penalty assessments of this chapter are imposed and collected.

(7) Every city and town shall transmit monthly one and seventy-five one-hundredths percent of all money, other than money received for parking infractions, retained under RCW 3.50.100 and 35.20.220 to the county treasurer for deposit as provided in subsection (4) of this section. [2011 c 336 § 246; 2011 c 171 § 3; 2009 c 479 § 8; 2000 c 71 § 3; 1999 c 86 § 1; 1997 c 66 § 9; 1996 c 122 § 2; 1991 c 293 § 1; 1989 c 252 § 29; 1987 c 281 § 1; 1985 c 443 § 13; 1984 c 258 § 311; 1983 c 239 § 1; 1982 1st ex.s. c 8 § 1; 1977 ex.s. c 302 § 10.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Effective date—2009 c 479: See note following RCW 2.56.030.

Findings—Intent—1996 c 122: "The legislature finds that current funding for county victim-witness advocacy programs is inadequate. Also, the state crime victims compensation program should be enhanced to provide for increased benefits to families of victims who are killed as a result of a criminal act. It is the intent of the legislature to provide increased financial support for the county and state crime victim and witness programs by requiring offenders to pay increased penalty assessments upon conviction of a gross misdemeanor or felony crime. The increased financial support is intended to allow county victim/witness programs to more fully assist victims and witnesses through the criminal justice processes. On the state level, the increased funds will allow the remedial intent of the crime victims com-

ensation program to be more fully served. Specifically, the increased funds from offender penalty assessments will allow more appropriate compensation for families of victims who are killed as a result of a criminal act, including reasonable burial benefits." [1996 c 122 § 1.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

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

Intent—Reports—1982 1st ex.s. c 8: "The intent of the legislature is that the victim of crime program will be self-funded. Toward that end, the department of labor and industries shall not pay benefits beyond the resources of the account. The department of labor and industries and the administrator for the courts shall cooperatively prepare a report on the collection of penalty assessments and the level of expenditures, and recommend adjustments to the revenue collection mechanism to the legislature before January 1, 1983. It is further the intent of the legislature that the percentage of funds devoted to comprehensive programs for victim assistance, as provided in RCW 7.68.035, be re-examined to ensure that it does not unreasonably conflict with the higher priority of compensating victims. To that end, the county prosecuting attorneys shall report to the legislature no later than January 1, 1984, either individually or as a group, on their experience and costs associated with such programs, describing the nature and extent of the victim assistance provided." [1982 1st ex.s. c 8 § 10.]

Additional notes found at www.leg.wa.gov

7.68.050 Right of action for damages—Election—Effect of election or recovery—Lien of state. (1) No right of action at law for damages incurred as a consequence of a criminal act shall be lost as a consequence of being entitled to benefits under the provisions of this chapter. The victim or his or her beneficiary may elect to seek damages from the person or persons liable for the claimed injury or death, and such victim or beneficiary is entitled to the full compensation and benefits provided by this chapter regardless of any election or recovery made pursuant to this section.

(2) For the purposes of this section, the rights, privileges, responsibilities, duties, limitations, and procedures contained in subsections (3) through (25) of this section apply.

(3)(a) If a third person is or may become liable to pay damages on account of a victim's injury for which benefits and compensation are provided under this chapter, the injured victim or beneficiary may elect to seek damages from the third person.

(b) In every action brought under this section, the plaintiff shall give notice to the department when the action is filed. The department may file a notice of statutory interest in recovery. When such notice has been filed by the department, the parties shall thereafter serve copies of all notices, motions, pleadings, and other process on the department. The department may then intervene as a party in the action to protect its statutory interest in recovery.

(c) For the purposes of this subsection, "injury" includes any physical or mental condition, disease, ailment, or loss, including death, for which compensation and benefits are paid or payable under this chapter.

(d) For the purposes of this chapter, "recovery" includes all damages and insurance benefits, including life insurance, paid in connection with the victim's injuries or death.

(4) An election not to proceed against the third person operates as an assignment of the cause of action to the department, which may prosecute or compromise the action in its discretion in the name of the victim, beneficiary, or legal representative.

(5) If an injury to a victim results in the victim's death, the department to which the cause of action has been assigned

may petition a court for the appointment of a special personal representative for the limited purpose of maintaining an action under this chapter and chapter 4.20 RCW.

(6) If a beneficiary is a minor child, an election not to proceed against a third person on such beneficiary's cause of action may be exercised by the beneficiary's legal custodian or guardian.

(7) Any recovery made by the department shall be distributed as follows:

(a) The department shall be paid the expenses incurred in making the recovery including reasonable costs of legal services;

(b) The victim or beneficiary shall be paid twenty-five percent of the balance of the recovery made, which shall not be subject to subsection (8) of this section, except that in the event of a compromise and settlement by the parties, the victim or beneficiary may agree to a sum less than twenty-five percent;

(c) The department shall be paid the amount paid to or on behalf of the victim or beneficiary by the department; and

(d) The victim or beneficiary shall be paid any remaining balance.

(8) Thereafter no payment shall be made to or on behalf of a victim or beneficiary by the department for such injury until any further amount payable shall equal any such remaining balance. Thereafter, such benefits shall be paid by the department to or on behalf of the victim or beneficiary as though no recovery had been made from a third person.

(9) If the victim or beneficiary elects to seek damages from the third person, any recovery made shall be distributed as follows:

(a) The costs and reasonable attorneys' fees shall be paid proportionately by the victim or beneficiary and the department. The department may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees;

(b) The victim or beneficiary shall be paid twenty-five percent of the balance of the award, except that in the event of a compromise and settlement by the parties, the victim or beneficiary may agree to a sum less than twenty-five percent;

(c) The department shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department for the amount paid;

(i) The department shall bear its proportionate share of the costs and reasonable attorneys' fees incurred by the victim or beneficiary to the extent of the benefits paid under this title. The department's proportionate share shall not exceed one hundred percent of the costs and reasonable attorneys' fees;

(ii) The department's proportionate share of the costs and reasonable attorneys' fees shall be determined by dividing the gross recovery amount into the benefits paid amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the victim or beneficiary;

(iii) The department's reimbursement share shall be determined by subtracting their proportionate share of the costs and reasonable attorneys' fees from the benefits paid amount;

(d) Any remaining balance shall be paid to the victim or beneficiary; and

(e) Thereafter no payment shall be made to or on behalf of a victim or beneficiary by the department for such injury until the amount of any further amount payable shall equal any such remaining balance minus the department's proportionate share of the costs and reasonable attorneys' fees in regards to the remaining balance. This proportionate share shall be determined by dividing the gross recovery amount into the remaining balance amount and multiplying this percentage times the costs and reasonable attorneys' fees incurred by the victim or beneficiary. Thereafter, such benefits shall be paid by the department to or on behalf of the victim or beneficiary as though no recovery had been made from a third person.

(10) The recovery made shall be subject to a lien by the department for its share under this section. Notwithstanding RCW 48.18.410, a recovery made from life insurance shall be subject to a lien by the department.

(11) The department has sole discretion to compromise the amount of its lien. In deciding whether or to what extent to compromise its lien, the department shall consider at least the following:

(a) The likelihood of collection of the award or settlement as may be affected by insurance coverage, solvency, or other factors relating to the third person;

(b) Factual and legal issues of liability as between the victim or beneficiary and the third person. Such issues include but are not limited to possible contributory negligence and novel theories of liability; and

(c) Problems of proof faced in obtaining the award or settlement.

(12) It shall be the duty of the person to whom any recovery is paid before distribution under this section to advise the department of the fact and amount of such recovery, the costs and reasonable attorneys' fees associated with the recovery, and to distribute the recovery in compliance with this section.

(13) The distribution of any recovery made by award or settlement of the third party action shall be confirmed by department order, served by electronic, registered or certified mail, and shall be subject to chapter 51.52 RCW. In the event the order of distribution becomes final under chapter 51.52 RCW, the director or the director's designee may file with the clerk of any county within the state a warrant in the amount of the sum representing the unpaid lien plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of such victim or beneficiary mentioned in the warrant, the amount of the unpaid lien plus interest accrued and the date when the warrant was filed. The amount of such warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the victim or beneficiary against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of

judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the victim or beneficiary within three days of filing with the clerk.

(14) The director, or the director's designee, may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice and order to withhold and deliver property of any kind if he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property which is due, owing, or belonging to any victim or beneficiary upon whom a warrant has been served by the department for payments due to the crime victims' compensation program. The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy; by certified mail, return receipt requested; or by any authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount claimed by the director in the notice together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

(15) The department may require the victim or beneficiary to exercise the right of election under this chapter by serving a written demand by electronic mail, registered mail, certified mail, or personal service on the victim or beneficiary.

(16) Unless an election is made within sixty days of the receipt of the demand, and unless an action is instituted or settled within the time granted by the department, the victim or beneficiary is deemed to have assigned the action to the department. The department shall allow the victim or beneficiary at least ninety days from the election to institute or settle the action. When a beneficiary is a minor child the demand shall be served upon the legal custodian or guardian of such beneficiary.

(17) If an action which has been filed is not diligently prosecuted, the department may petition the court in which the action is pending for an order assigning the cause of action to the department. Upon a sufficient showing of a lack of diligent prosecution the court in its discretion may issue the order.

(18) If the department has taken an assignment of the third party cause of action under subsection (16) of this section, the victim or beneficiary may, at the discretion of the department, exercise a right of reelection and assume the cause of action subject to reimbursement of litigation expenses incurred by the department.

(19) If the victim or beneficiary elects to seek damages from the third person, notice of the election must be given to the department. The notice shall be by registered mail, certified mail, or personal service. If an action is filed by the victim or beneficiary, a copy of the complaint must be sent by registered mail to the department.

(20) A return showing service of the notice on the department shall be filed with the court but shall not be part of the record except as necessary to give notice to the defendant of the lien imposed by subsection (10) of this section.

(21) Any compromise or settlement of the third party cause of action by the victim or beneficiary which results in less than the entitlement under this title is void unless made with the written approval of the department. For the purposes of this chapter, "entitlement" means benefits and compensation paid and estimated by the department to be paid in the future.

(22) If a compromise or settlement is void because of subsection (21) of this section, the department may petition the court in which the action was filed for an order assigning the cause of action to the department. If an action has not been filed, the department may proceed as provided in chapter 7.24 RCW.

(23) The fact that the victim or beneficiary is entitled to compensation under this title shall not be pleaded or admissible in evidence in any third-party action under this chapter. Any challenge of the right to bring such action shall be made by supplemental pleadings only and shall be decided by the court as a matter of law.

(24) Actions against third persons that are assigned by the claimant to the department, voluntarily or by operation of law in accordance with this chapter, may be prosecuted by special assistant attorneys general.

(25) The attorney general shall select special assistant attorneys general from a list compiled by the department and the Washington state bar association. The attorney general, in conjunction with the department and the Washington state bar association, shall adopt rules and regulations outlining the criteria and the procedure by which private attorneys may have their names placed on the list of attorneys available for appointment as special assistant attorneys general to litigate third-party actions under subsection (24) of this section.

(26) The 1980 amendments to this section apply only to injuries which occur on or after April 1, 1980. [2011 c 346 § 704; 2011 c 336 § 247; 1998 c 91 § 1; 1980 c 156 § 3; 1977 ex.s. c 302 § 3; 1973 1st ex.s. c 122 § 5.]

Reviser's note: This section was amended by 2011 c 336 § 247 and by 2011 c 346 § 704, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Legislative intent—"Public or private insurance"—1980 c 156: See note following RCW 7.68.020.

7.68.060 Applications for benefits—Accrual of rights. (1) Except for applications received pursuant to subsection (6) of this section, no compensation of any kind shall be available under this chapter if:

(a) An application for benefits is not received by the department within two years after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of beneficiaries accrued, unless the director has determined that "good cause" exists to expand the time permitted to receive the application. "Good cause" shall be determined by the department on a case-by-case basis and may extend the period of time in which an application can be received for up to five years after the date the criminal act was reported to a local police department or sheriff's office or the date the rights of beneficiaries accrued; or

(b) The criminal act is not reported by the victim or someone on his or her behalf to a local police department or sheriff's office within twelve months of its occurrence or, if it could not reasonably have been reported within that period, within twelve months of the time when a report could reasonably have been made. In making determinations as to reasonable time limits, the department shall give greatest weight to the needs of the victims.

(2) No person or spouse, child, or dependent of such person is eligible for benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(3) No person or spouse, child, or dependent of such person is eligible for benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator of the criminal act which gave rise to the claim.

(4) A victim is not eligible for benefits under this chapter if he or she:

(a) Has been convicted of a felony offense within five years preceding the criminal act for which they are applying where the felony offense is a violent offense under RCW 9.94A.030 or a crime against persons under RCW 9.94A.411, or is convicted of such a felony offense after the criminal act for which they are applying; and

(b) Has not completely satisfied all legal financial obligations owed.

(5) Because victims of childhood criminal acts may repress conscious memory of such criminal acts far beyond the age of eighteen, the rights of adult victims of childhood criminal acts shall accrue at the time the victim discovers or reasonably should have discovered the elements of the crime. In making determinations as to reasonable time limits, the

department shall give greatest weight to the needs of the victim.

(6)(a) Benefits under this chapter are available to any victim of a person against whom the state initiates proceedings under chapter 71.09 RCW. The right created under this subsection shall accrue when the victim is notified of proceedings under chapter 71.09 RCW or the victim is interviewed, deposed, or testifies as a witness in connection with the proceedings. An application for benefits under this subsection must be received by the department within two years after the date the victim's right accrued unless the director determines that good cause exists to expand the time to receive the application. The director shall determine "good cause" on a case-by-case basis and may extend the period of time in which an application can be received for up to five years after the date the right of the victim accrued. Benefits under this subsection shall be limited to compensation for costs or losses incurred on or after the date the victim's right accrues for a claim allowed under this subsection.

(b) A person identified as the "minor" in the charge of commercial sexual abuse of a minor under RCW 9.68A.100, promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102 is considered a victim of a criminal act for the purpose of the right to benefits under this chapter even if the person is also charged with prostitution under RCW 9A.88.030. [2011 c 346 § 301; 2001 c 153 § 1; 1996 c 122 § 4; 1990 c 3 § 501; 1986 c 98 § 1; 1985 c 443 § 14; 1977 ex.s. c 302 § 4; 1975 1st ex.s. c 176 § 2; 1973 1st ex.s. c 122 § 6.]

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

Findings—Intent—1996 c 122: See note following RCW 7.68.035.

Additional notes found at www.leg.wa.gov

7.68.061 Who not entitled to compensation. If injury or death results to a victim from the deliberate intention of the victim himself or herself to produce such injury or death, or while the victim is engaged in the attempt to commit, or the commission of, a felony, neither the victim nor the widow, widower, child, or dependent of the victim shall receive any payment under this chapter.

If injury or death results to a victim from the deliberate intention of a beneficiary of that victim to produce the injury or death, or if injury or death results to a victim as a consequence of a beneficiary of that victim engaging in the attempt to commit, or the commission of, a felony, the beneficiary shall not receive any payment under this chapter.

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter.

No payment shall be made to or for a natural child of a deceased victim and, at the same time, as the stepchild of a deceased victim. [2011 c 346 § 305.]

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

7.68.062 Application for compensation—Physician shall provide assistance. (1)(a) Where a victim is eligible for compensation under this chapter he or she shall file with the department his or her application for such, together with

the certificate of the physician or licensed advanced registered nurse practitioner who attended him or her. An application form developed by the department shall include a notice specifying the victim's right to receive health services from a physician or licensed advanced registered nurse practitioner utilizing his or her private or public insurance or if no insurance, of the victim's choice under RCW 7.68.095.

(b) The physician or licensed advanced registered nurse practitioner who attended the injured victim shall inform the injured victim of his or her rights under this chapter and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the victim.

(2) If the application required by this section is filed on behalf of the victim by the physician who attended the victim, the physician may transmit the application to the department electronically. [2011 c 346 § 302.]

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

7.68.063 Beneficiaries' application for compensation.

Where death results from injury the parties eligible for compensation under this chapter, or someone in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be eligible for compensation under this chapter, certificates of attending physician or licensed advanced registered nurse practitioner, if any, and such proof as required by the rules of the department. [2011 c 346 § 303.]

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

7.68.064 Application for change in compensation.

If change of circumstances warrants an increase or rearrangement of compensation, like application shall be made therefor. Where the application has been granted, compensation and other benefits if in order shall be allowed for periods of time up to sixty days prior to the receipt of such application. [2011 c 346 § 304.]

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

7.68.066 Medical examinations required by department—Medical bureau—Disputes. (1) The department may require that the victim present himself or herself for a special medical examination by a physician or physicians selected by the department, and the department may require that the victim present himself or herself for a personal interview. The costs of the examination or interview, including payment of any reasonable travel expenses, shall be paid by the department as part of the victim's total claim under RCW 7.68.070(1).

(2) The director may establish a medical bureau within the department to perform medical examinations under this section.

(3) Where a dispute arises from the handling of any claim before the condition of the injured victim becomes fixed, the victim may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In these cases, the department shall proceed as

provided in this section and an order shall issue in accordance with RCW 51.52.050. [2011 c 346 § 205.]

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

7.68.070 Benefits—Right to and amount—Limitations. The eligibility for benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in this chapter.

(1) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or beneficiary in case of death of the victim, are eligible for benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. No more than fifty thousand dollars shall be paid in total per claim, of which nonmedical benefits shall not exceed forty thousand dollars of the entire claim. Benefits may include a combination of burial expenses, financial support for lost wages, and medical expenses.

(a) Benefits payable for temporary total disability that results in financial support for lost wages shall not exceed fifteen thousand dollars.

(b) Benefits payable for a permanent total disability or fatality that results in financial support for lost wages shall not exceed forty thousand dollars. After at least twelve monthly payments have been paid, the department shall have the sole discretion to make a final lump sum payment of the balance remaining.

(c) Benefits for disposition of remains or burial expenses shall not exceed five thousand seven hundred fifty dollars per claim.

(2) If the victim was not gainfully employed at the time of the criminal act, no financial support for lost wages will be paid to the victim or any beneficiaries.

(3) No victim or beneficiary shall receive compensation for or during the day on which the injury was received.

(4) If a victim's employer continues to pay the victim's wages that he or she was earning at the time of the crime, the victim shall not receive any financial support for lost wages.

(5) When the director determines that a temporary total disability results in a loss of wages, the victim shall receive monthly subject to subsection (1) of this section, during the period of disability, sixty percent of the victim's monthly wage but no more than one hundred percent of the state's average monthly wage as defined in RCW 7.68.020. The minimum monthly payment shall be no less than five hundred dollars. Monthly wages shall be based upon employer wage statements, employment security records, or documents reported to and certified by the internal revenue service. Monthly wages must be determined using the actual documented monthly wage or averaging the total wages earned for up to twelve successive calendar months preceding the injury. In cases where the victim's wages and hours are fixed, they shall be determined by multiplying the daily wage the victim was receiving at the time of the injury:

(a) By five, if the victim was normally employed one day a week;

(b) By nine, if the victim was normally employed two days a week;

(c) By thirteen, if the victim was normally employed three days a week;

(d) By eighteen, if the victim was normally employed four days a week;

(e) By twenty-two, if the victim was normally employed five days a week;

(f) By twenty-six, if the victim was normally employed six days a week; or

(g) By thirty, if the victim was normally employed seven days a week.

(6) When the director determines that a permanent total disability or death results in a loss of wages, the victim or eligible spouse shall receive the monthly payments established in this subsection, not to exceed forty thousand dollars or the limits established in this chapter.

(7) If the director determines that the victim is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

(8) In the case of death, if there is no eligible spouse, benefits shall be paid to the child or children of the deceased victim. If there is no spouse or children, no payments shall be made under this section. If the spouse remarries before this benefit is paid in full benefits shall be paid to the victim's child or children and the spouse shall not receive further payment. If there is no child or children no further payments will be made.

(9) The benefits for disposition of remains or burial expenses shall not exceed five thousand seven hundred fifty dollars per claim and to receive reimbursement for expenses related to the disposition of remains or burial, the department must receive an itemized statement from a provider of services within twelve months of the date upon which the death of the victim is officially recognized as a homicide. If there is a delay in the recovery of remains or the release of remains for disposition or burial, an itemized statement from a provider of services must be received within twelve months of the date of the release of the remains.

(10) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

(11) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act.

(12) A victim whose crime occurred in another state who qualifies for benefits under RCW 7.68.060(6) may receive appropriate mental health counseling to address distress arising from participation in the civil commitment proceedings. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080.

(13) If the provisions of this title relative to compensation for injuries to or death of victims become invalid because of any adjudication, or are repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this title by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death.

(14) The benefits established in RCW 51.32.080 for permanent partial disability will not be provided to any crime victim or for any claim submitted on or after July 1, 2011.

[2011 c 346 § 401. Prior: 2010 c 289 § 6; 2010 c 122 § 1; 2009 c 38 § 1; 2002 c 54 § 1; 1996 c 122 § 5; 1993 sp.s. c 24 § 912; 1992 c 203 § 1; 1990 c 3 § 502; 1989 1st ex.s. c 5 § 5; 1989 c 12 § 2; 1987 c 281 § 8; 1985 c 443 § 15; 1983 c 239 § 2; 1982 1st ex.s. c 8 § 2; 1981 1st ex.s. c 6 § 26; 1977 ex.s. c 302 § 5; 1975 1st ex.s. c 176 § 3; 1973 1st ex.s. c 122 § 7.]

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

Effective date, application—2010 c 122 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect April 1, 2010, for all claims of victims of criminal acts occurring after July 1, 1981." [2010 c 122 § 8.]

Expiration date—2010 c 122 §§ 1 and 2: "Sections 1 and 2 of this act expire July 1, 2015." [2010 c 122 § 9.]

Findings—Intent—1996 c 122: See note following RCW 7.68.035.

Effective dates—Intent—Reports—1982 1st ex.s. c 8: See notes following RCW 7.68.035.

Additional notes found at www.leg.wa.gov

7.68.071 Determination of permanent total disability. (1) Benefits for permanent total disability shall be determined under the director's supervision, only after the injured victim's condition becomes fixed.

(2) All determinations of permanent total disabilities shall be made by the department. The victim may make a request or the inquiry may be initiated by the director. Determinations shall be required in every instance where permanent total disability is likely to be present.

(3) A request for determination of permanent total disability shall be examined by the department, and the department shall issue an order in accordance with RCW 51.52.050. [2011 c 346 § 403.]

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

7.68.072 Aggravation, diminution, or termination of disability. (1) If aggravation, diminution, or termination of disability takes place, the director may, upon the application of the beneficiary, made within seven years from the date the first closing order becomes final, or at any time upon his or her own motion, readjust the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment. The director may, upon application of the victim made at any time, provide proper and necessary medical and surgical services as authorized under RCW 7.68.095.

(2) "Closing order" as used in this section means an order based on factors which include medical recommendation, advice, examination, or the maximum benefit has been met. [2011 c 346 § 404.]

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

7.68.073 Reduction in disability compensation—Recovery of overpayments—Notice—Waiver—Application—Adjustments due to federal reductions. (1) For persons receiving compensation for temporary total disability pursuant to the provisions of this chapter, such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act as now or hereafter amended not to exceed the amount of

the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 U.S.C. 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act. In the event of an overpayment of benefits, the department may not recover more than the overpayments for the six months immediately preceding the date on which the department notifies the victim that an overpayment has occurred. Upon determining that there has been an overpayment, the department shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 7.68.126.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this chapter. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the victim receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the victim may be eligible under this chapter or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) Subsection (1) of this section applies to:

(a) Victims under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Victims under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Victims who will become sixty-five years of age on or after June 10, 2004.

(8)(a) If the federal social security administration makes a retroactive reduction in the federal social security disability benefit entitlement of a victim for periods of temporary total, temporary partial, or total permanent disability for which the department also reduced the victim's benefit amounts under this section, the department shall make adjustments in the calculation of benefits and pay the additional benefits to the

victim as appropriate. However, the department shall not make changes in the calculation or pay additional benefits unless the victim submits a written request, along with documentation satisfactory to the director of an overpayment assessment by the social security administration, to the department.

(b) Additional benefits paid under this subsection:

(i) Are paid without interest and without regard to whether the victim's claim under this chapter is closed; and

(ii) Do not affect the status or the date of the claim's closure.

(c) This subsection does not apply to requests on claims for which a determination on the request has been made and is not subject to further appeal. [2011 c 346 § 405.]

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

7.68.074 Compensation for loss of or damage to clothing or footwear. Victims otherwise eligible for compensation under this chapter may also claim compensation for loss of or damage to the victim's personal clothing or footwear incurred in the course of emergency medical treatment for injuries. [2011 c 346 § 406.]

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

7.68.075 Marital status—Payment for or on account of children. Under this chapter, the marital status of all victims shall be deemed to be fixed as of the date of the criminal act. All references to the child or children living or conceived of the victim in this chapter shall be deemed to refer to such child or children as of the date of the criminal act unless the context clearly indicates the contrary.

Payments for or on account of any such child or children shall cease when such child is no longer a "child" or on the death of any such child whichever occurs first.

Payments to the victim or surviving spouse for or on account of any such child or children shall be made only when the victim or surviving spouse has legal custody of any such child or children. Where the victim or surviving spouse does not have such legal custody any payments for or on account of any such child or children shall be made to the person having legal custody of such child or children and the amount of payments shall be subtracted from the payments which would have been due the victim or surviving spouse had legal custody not been transferred to another person. It shall be the duty of any person or persons receiving payments because of legal custody of any child to immediately notify the department of any change in such legal custody. [2011 c 346 § 207; 1977 ex.s. c 302 § 6; 1975 1st ex.s. c 176 § 9.]

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

7.68.076 Proof of contribution made by deceased victim. A beneficiary shall at all times furnish the department with proof satisfactory to the director of the nature, amount, and extent of the contribution made by the deceased victim. [2011 c 346 § 407.]

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

7.68.077 Nonresident alien beneficiary. Except as otherwise provided by treaty or this chapter, whenever compensation is payable to a beneficiary who is an alien not residing in the United States, the department shall pay the compensation to which a resident beneficiary is eligible under this chapter. But if a nonresident alien beneficiary is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, he or she shall receive no compensation. No payment shall be made to any beneficiary residing in any country with which the United States does not maintain diplomatic relations when such payment is due. [2011 c 346 § 306.]

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

7.68.080 Reimbursement of costs for transportation, medical services, counseling—Medical examinations—Regulatory inspection program. (1) When the injury to any victim is so serious as to require the victim's being taken from the place of injury to a place of treatment, reasonable transportation costs to the nearest place of proper treatment shall be reimbursed by the department as part of the victim's total claim under RCW 7.68.070(1).

(2) In the case of alleged rape or molestation of a child, the reasonable costs of a colposcopy examination shall be reimbursed by the department. Costs for a colposcopy examination given under this subsection shall not be included as part of the victim's total claim under RCW 7.68.070(1).

(3) The director shall adopt rules for fees and charges for hospital, clinic, medical, and other health care services, including fees and costs for durable medical equipment, eye glasses, hearing aids, and other medically necessary devices for crime victims under this chapter. The director shall set these service levels and fees at a level no lower than those established by the health care authority under Title 74 RCW. In establishing fees for medical and other health care services, the director shall consider the director's duty to purchase health care in a prudent, cost-effective manner. The director shall establish rules adopted in accordance with chapter 34.05 RCW. Nothing in this chapter may be construed to require the payment of interest on any billing, fee, or charge.

(4) Whenever the director deems it necessary in order to resolve any medical issue, a victim shall submit to examination by a physician or physicians selected by the director, with the rendition of a report to the person ordering the examination. The department shall provide the physician performing an examination with all relevant medical records from the victim's claim file. The director, in his or her discretion, may charge the cost of such examination or examinations to the crime victims' compensation fund. If the examination is paid for by the victim, then the cost of said examination shall be reimbursed to the victim for reasonable costs connected with the examination as part of the victim's total claim under RCW 7.68.070(1).

(5) Victims of sexual assault are eligible to receive appropriate counseling. Fees for such counseling shall be determined by the department. Counseling services may include, if determined appropriate by the department, coun-

seling of members of the victim's immediate family, other than the perpetrator of the assault.

(6) Immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Up to twelve counseling sessions may be received for one year after the crime victim's claim has been allowed. Fees for counseling shall be determined by the department in accordance with and subject to this section. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

(7) Pursuant to RCW 7.68.070(12), a victim of a sex offense that occurred outside of Washington may be eligible to receive mental health counseling related to participation in proceedings to civilly commit a perpetrator.

(8) The crime victims' compensation program shall consider payment of benefits solely for the effects of the criminal act.

(9) The legislature finds and declares it to be in the public interest of the state of Washington that a proper regulatory and inspection program be instituted in connection with the provision of any services provided to crime victims pursuant to this chapter. In order to effectively accomplish such purpose and to assure that the victim receives such services as are paid for by the state of Washington, the acceptance by the victim of such services, and the request by a provider of services for reimbursement for providing such services, shall authorize the director of the department or the director's authorized representative to inspect and audit all records in connection with the provision of such services. In the conduct of such audits or investigations, the director or the director's authorized representatives may:

(a) Examine all records, or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the department, notwithstanding the provisions of any other statute which may make or purport to make such records privileged or confidential, except that no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information obtained under authority of this section by the department is prohibited and constitutes a violation of RCW 42.52.050, unless such disclosure is directly connected to the official duties of the department. The disclosure of patient information as required under this section shall not subject any physician, licensed advanced registered nurse practitioner, or other health care provider to any liability for breach of any confidential relationships between the provider and the patient. The director or the director's authorized representative shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation, or proceedings;

(b) Approve or deny applications to participate as a provider of services furnished to crime victims pursuant to this title;

(c) Terminate or suspend eligibility to participate as a provider of services furnished to victims pursuant to this title; and

(d) Pursue collection of unpaid overpayments and/or penalties plus interest accrued from health care providers pursuant to RCW 51.32.240(6).

(10) When contracting for health care services and equipment, the department, upon request of a contractor, shall keep confidential financial and valuable trade information, which shall be exempt from public inspection and copying under chapter 42.56 RCW. [2011 1st sp.s. c 15 § 69; 2011 c 346 § 501; 1990 c 3 § 503; 1989 1st ex.s. c 5 § 6; 1986 c 98 § 2; 1983 c 239 § 3; 1981 1st ex.s. c 6 § 27; 1975 1st ex.s. c 176 § 4; 1973 1st ex.s. c 122 § 8.]

Reviser's note: This section was amended by 2011 c 346 § 501 and by 2011 1st sp.s. c 15 § 69, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

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

Additional notes found at www.leg.wa.gov

7.68.085 Cap on medical benefits—Alternative programs. (Effective until July 1, 2015.) (1) This section has no force or effect from April 1, 2010, until July 1, 2015.

(2) The director of labor and industries shall institute a cap on medical benefits of one hundred fifty thousand dollars per injury or death.

For the purposes of this section, an individual will not be required to use his or her assets other than funds recovered as a result of a civil action or criminal restitution, for medical expenses or pain and suffering, in order to qualify for an alternative source of payment.

The director shall, in cooperation with the department of social and health services, establish by October 1, 1989, a process to aid crime victims in identifying and applying for appropriate alternative benefit programs, if any, administered by the department of social and health services. [2011 c 346 § 502; 2010 c 122 § 2; 2009 c 479 § 9; 1990 c 3 § 504; 1989 1st ex.s. c 5 § 3.]

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

Effective date, application—Expiration date—2010 c 122 §§ 1 and 2: See notes following RCW 7.68.070.

Effective date—2009 c 479: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

7.68.085 Cap on medical benefits—Alternative programs. (Effective July 1, 2015.) The director of labor and industries shall institute a cap on medical benefits of one hundred fifty thousand dollars per injury or death.

For the purposes of this section, an individual will not be required to use his or her assets other than funds recovered as a result of a civil action or criminal restitution, for medical expenses or pain and suffering, in order to qualify for an alternative source of payment.

The director shall, in cooperation with the department of social and health services, establish by October 1, 1989, a process to aid crime victims in identifying and applying for appropriate alternative benefit programs, if any, administered

by the department of social and health services. [2011 c 346 § 502; 2009 c 479 § 9; 1990 c 3 § 504; 1989 1st ex.s. c 5 § 3.]

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

Effective date—2009 c 479: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

7.68.092 Health care professionals to maintain proper credentials and educational standards—Standards for treatment. Health care professionals providing treatment or services to crime victims shall maintain all proper credentials and educational standards as required by law, and be registered with the department of health. The crime victims' compensation program does not pay for experimental or controversial treatment. Treatment shall be evidence-based and curative. [2011 c 346 § 504.]

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

7.68.093 Medical examinations—Department to monitor quality and objectivity. The department shall examine the credentials of persons conducting special medical examinations and shall monitor the quality and objectivity of examinations and reports. The department shall adopt rules to ensure that examinations are performed only by qualified persons meeting department standards. [2011 c 346 § 505.]

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

7.68.094 Medical examinations—Refusal to submit—Travel expenses—Compensation for time lost. (1) Any victim eligible to receive any benefits or claiming such under this title shall, if requested by the department submit himself or herself for medical examination, at a time and from time to time, at a place reasonably convenient for the victim as may be provided by the rules of the department. An injured victim, whether an alien or other injured victim, who is not residing in the United States at the time that a medical examination is requested may be required to submit to an examination at any location in the United States determined by the department.

(2) If the victim refuses to submit to medical examination, or obstructs the same, or, if any injured victim shall persist in unsanitary or injurious practices which tend to imperil or retard his or her recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his or her recovery does not cooperate in reasonable efforts at such rehabilitation, the department may suspend any further action on any claim of such victim so long as such refusal, obstruction, noncooperation, or practice continues and thus, the department may reduce, suspend, or deny any compensation for such period. The department may not suspend any further action on any claim of a victim or reduce, suspend, or deny any compensation if a victim has good cause for refusing to submit to or to obstruct any examination, evaluation, treatment, or practice requested by the department or required under this section.

(3) If the victim necessarily incurs traveling expenses in attending the examination pursuant to the request of the

department, such traveling expenses shall be repaid to him or her upon proper voucher and audit.

(4) If the medical examination required by this section causes the victim to be absent from his or her work without pay, the victim shall be paid compensation in an amount equal to his or her usual wages for the time lost from work while attending the medical examination when the victim is insured by the department. [2011 c 346 § 506.]

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

7.68.095 Extent and duration of treatment. Upon the occurrence of any injury to a victim eligible for compensation under the provisions of this chapter, he or she shall receive proper and necessary medical and surgical services using his or her private or public insurance or if no insurance, using a provider of his or her own choice. In all accepted claims, treatment shall be limited in point of duration as follows:

(1) No treatment shall be provided once the victim has received the maximum compensation under this chapter.

(2) In case of temporary disability, treatment shall not extend beyond the time when monthly allowances to him or her shall cease. After any injured victim has returned to his or her work, his or her medical and surgical treatment may be continued if, and so long as, such continuation is determined by the director to be necessary to his or her recovery, and as long as the victim has not received the maximum compensation under this chapter. [2011 c 346 § 507.]

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

7.68.096 Medical providers—Failure to report or comply as required. Any medical provider who fails, neglects, or refuses to file a report with the director, as required by this chapter, within five days of the date of treatment, showing the condition of the injured victim at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured victim, as required by this chapter, shall be subject to a civil penalty determined by the director but not to exceed two hundred fifty dollars. The amount shall be paid into the crime victims' compensation account. [2011 c 346 § 508.]

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

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

7.68.101 Duties of attending physician or licensed advanced registered nurse practitioner—Medical information. Physicians or licensed advanced registered nurse practitioners examining or attending injured victims under this chapter shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department upon the condition or treatment of any such victim, or upon any other matters concerning such victims in their care. Except under RCW 49.17.210 and 49.17.250, all medical information in the possession or control of any person and relevant to the particular injury in the

opinion of the department pertaining to any victim whose injury is the basis of a claim under this chapter shall be made available at any stage of the proceedings to the claimant's representative and the department upon request, and no person shall incur any legal liability by reason of releasing such information. [2011 c 346 § 307.]

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

7.68.111 Payment of compensation after appeal—Enforcement of order—Penalty. (1)(a) If the victim or beneficiary in a claim prevails in an appeal by any party to the department or the court, the department shall comply with the department or court's order with respect to the payment of compensation within the later of the following time periods:

(i) Sixty days after the compensation order has become final and is not subject to review or appeal; or

(ii) If the order has become final and is not subject to review or appeal and the department has, within the period specified in (a)(i) of this subsection, requested the filing by the victim or beneficiary of documents necessary to make payment of compensation, sixty days after all requested documents are filed with the department.

The department may extend the sixty-day time period for an additional thirty days for good cause.

(b) If the department fails to comply with (a) of this subsection, any person eligible for compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for Thurston county.

(2) In a proceeding under this section, the court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders and may award a penalty of up to one thousand dollars to the person eligible for compensation under the order.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this chapter. [2011 c 346 § 601.]

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

7.68.125 Erroneous or fraudulent payment—Erroneous failure to make payment—Repayment orders—Right to contest orders—Lien. (1)(a) Whenever any payment of benefits under this chapter is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the crime victims' compensation program. The department must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

(b) Except as provided in subsections (3) and (4) of this section, the department may only assess an overpayment of

benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(c) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any such timely claim where the recovery would be against equity and good conscience.

(2) Whenever the department fails to pay benefits because of clerical error, mistake of identity, or innocent misrepresentation, all not induced by recipient willful misrepresentation, the recipient may request an adjustment of benefits to be paid from the crime victims' compensation programs subject to the following:

(a) The recipient must request an adjustment in benefits within one year from the date of the incorrect payment or it will be deemed any claim therefore has been waived.

(b) The recipient may not seek an adjustment of benefits because of adjudicator error. Adjustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department or an appeal with the department within ninety days from the date the order is communicated as provided in RCW 51.52.050. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

(3) Whenever any payment of benefits under this chapter has been made pursuant to an adjudication by the department or by order of any court and timely appeal therefrom has been made where the final decision is that any such payment was made pursuant to an erroneous adjudication, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim.

(a) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise discretion to waive, in whole or in part, the amount of any such payments where the recovery would be against equity and good conscience.

(b) The department shall first attempt recovery of overpayments for health services from any entity that provided health insurance to the victim to the extent that the health insurance entity would have provided health insurance benefits.

(4)(a) Whenever any payment of benefits under this chapter has been induced by willful misrepresentation the recipient thereof shall repay any such payment together with a penalty of fifty percent of the total of any such payments and the amount of such total sum may be recouped from any future payments due to the recipient on any claim with the crime victims' compensation program against whom the willful misrepresentation was committed and the amount of such penalty shall be placed in the crime victims' compensation fund. Such repayment or recoupment must be demanded or ordered within three years of the discovery of the willful misrepresentation.

(b) For purposes of this subsection (4), it is willful misrepresentation for a person to obtain payments or other benefits under this chapter in an amount greater than that to which

the person otherwise would be entitled. Willful misrepresentation includes:

(i) Willful false statement; or

(ii) Willful misrepresentation, omission, or concealment of any material fact.

(c) For purposes of this subsection (4), "willful" means a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the specific intent of obtaining, continuing, or increasing benefits under this chapter.

(d) For purposes of this subsection (4), failure to disclose a work-type activity must be willful in order for a misrepresentation to have occurred.

(e) For purposes of this subsection (4), a material fact is one which would result in additional, increased, or continued benefits, including but not limited to facts about physical restrictions, or work-type activities which either result in wages or income or would be reasonably expected to do so. Wages or income include the receipt of any goods or services. For a work-type activity to be reasonably expected to result in wages or income, a pattern of repeated activity must exist. For those activities that would reasonably be expected to result in wages or produce income, but for which actual wage or income information cannot be reasonably determined, the department shall impute wages.

(5) The victim, beneficiary, or other person affected thereby shall have the right to contest an order assessing an overpayment pursuant to this section in the same manner and to the same extent as provided under RCW 51.52.050 and 51.52.060. In the event such an order becomes final under chapter 51.52 RCW and notwithstanding the provisions of subsections (1) through (4) of this section, the director or director's designee may file with the clerk in any county within the state a warrant in the amount of the sum representing the unpaid overpayment and/or penalty plus interest accruing from the date the order became final. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for such warrant and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the victim, beneficiary, or other person mentioned in the warrant, the amount of the unpaid overpayment and/or penalty plus interest accrued, and the date the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to and interest in all real and personal property of the victim, beneficiary, or other person against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of such clerk. The sheriff shall then proceed in the same manner and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in the superior court. Such warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the department in the manner provided by law in the case of judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. A copy of such warrant shall be mailed to the victim, beneficiary, or other person within three days of filing with the clerk.

The director or director's designee may issue to any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, a notice to withhold and deliver property of any kind if there is reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is due, owing, or belonging to any victim, beneficiary, or other person upon whom a warrant has been served for payments due the department. The notice and order to withhold and deliver shall be served by certified mail accompanied by an affidavit of service by mailing or served by the sheriff of the county, or by the sheriff's deputy, or by any authorized representative of the director or director's designee, or by electronic means or other methods authorized by law. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired or in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with such notice and order, any property that may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's authorized representative upon demand. If the party served and named in the notice and order fails to answer the notice and order within the time prescribed in this section, the court may, after the time to answer such order has expired, render judgment by default against the party named in the notice for the full amount, plus costs, claimed by the director or the director's designee in the notice. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

This subsection shall only apply to orders assessing an overpayment which are issued on or after July 28, 1991. This subsection shall apply retroactively to all orders assessing an overpayment resulting from willful misrepresentation, civil or criminal.

(6) Orders assessing an overpayment which are issued on or after July 28, 1991, shall include a conspicuous notice of the collection methods available to the department. [2011 c 346 § 701; 1995 c 33 § 2; 1975 1st ex.s. c 176 § 8.]

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

7.68.126 Recovery of overpayments. Notwithstanding any other provisions of law, any overpayments previously recovered under the provisions of RCW 7.68.073 as now or hereafter amended shall be limited to six months' overpayments. Where greater recovery has already been made, the director, in his or her discretion, may make restitution in those cases where an extraordinary hardship has been created. [2011 c 346 § 702.]

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

7.68.130 Public or private insurance—Attorneys' fees and costs of victim. (1) Benefits payable pursuant to this chapter shall be reduced by the amount of any other public or private insurance available, less a proportionate share of reasonable attorneys' fees and costs, if any, incurred by the victim in obtaining recovery from the insurer. Calculation of a proportionate share of attorneys' fees and costs shall be made under the formula established in RCW 7.68.050 (9) through (14). The department or the victim may require court approval of costs and attorneys' fees or may petition a court for determination of the reasonableness of costs and attorneys' fees.

(2) Benefits payable after 1980 to victims injured or killed before 1980 shall be reduced by any other public or private insurance including but not limited to social security.

(3) Payment by the department under this chapter shall be secondary to other insurance benefits, notwithstanding the provision of any contract or coverage to the contrary. In the case of private life insurance proceeds, the first forty thousand dollars of the proceeds shall not be considered for purposes of any reduction in benefits.

(4) If the department determines that a victim is likely to be eligible for other public insurance or support services, the department may require the applicant to apply for such services before awarding benefits under RCW 7.68.070. If the department determines that a victim shall apply for such services and the victim refuses or does not apply for those services, the department may deny any further benefits under this chapter. The department may require an applicant to provide a copy of their determination of eligibility before providing benefits under this chapter.

(5) Before payment of benefits will be considered victims shall use their private insurance coverage.

(6) For the purposes of this section, the collection methods available under RCW 7.68.125(5) apply. [2011 c 346 § 703; 1995 c 33 § 3; 1985 c 443 § 16; 1980 c 156 § 4; 1977 ex.s. c 302 § 8; 1973 1st ex.s. c 122 § 13.]

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

Legislative intent—"Public or private insurance"—1980 c 156: See note following RCW 7.68.020.

Additional notes found at www.leg.wa.gov

7.68.200 Payment for reenactments of crimes—Contracts—Deposits—Damages. After hearing, as provided in RCW 7.68.210, every person, firm, corporation, partnership, association, or other legal entity contracting with any person or the representative or assignee of any person, accused or convicted of a crime in this state, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such accused or convicted person's thoughts, feelings, opinion, or emotions regarding such crime, shall submit a copy of such contract to the department and pay over to the department any moneys which would otherwise, by terms of such contract, be owing to the person so accused or convicted or his or her representatives. The department shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by: (1) Such convicted per-

son; or (2) such accused person, but only if such accused person is eventually convicted of the crime and provided that such victim, within five years of the date of the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or his or her representatives. [2011 c 336 § 248; 1979 ex.s. c 219 § 13.]

Additional notes found at www.leg.wa.gov

7.68.240 Payment if no actions pending. Upon a showing by any convicted person or the state that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such convicted person pursuant to RCW 7.68.200 through 7.68.280, the department shall immediately pay over fifty percent of any moneys in the escrow account to such person or his or her legal representatives and fifty percent of any moneys in the escrow account to the fund under RCW 7.68.035(4). [2011 c 336 § 249; 1988 c 155 § 4; 1979 ex.s. c 219 § 16.]

Additional notes found at www.leg.wa.gov

Chapter 7.70 RCW ACTIONS FOR INJURIES RESULTING FROM HEALTH CARE

Sections

7.70.030	Propositions required to be established—Burden of proof.
7.70.040	Necessary elements of proof that injury resulted from failure to follow accepted standard of care.
7.70.050	Failure to secure informed consent—Necessary elements of proof—Emergency situations.

7.70.030 Propositions required to be established—Burden of proof. No award shall be made in any action or arbitration for damages for injury occurring as the result of health care which is provided after June 25, 1976, unless the plaintiff establishes one or more of the following propositions:

(1) That injury resulted from the failure of a health care provider to follow the accepted standard of care;

(2) That a health care provider promised the patient or his or her representative that the injury suffered would not occur;

(3) That injury resulted from health care to which the patient or his or her representative did not consent.

Unless otherwise provided in this chapter, the plaintiff shall have the burden of proving each fact essential to an award by a preponderance of the evidence. [2011 c 336 § 250; 1975-'76 2nd ex.s. c 56 § 8.]

Additional notes found at www.leg.wa.gov

7.70.040 Necessary elements of proof that injury resulted from failure to follow accepted standard of care. The following shall be necessary elements of proof that injury resulted from the failure of the health care provider to follow the accepted standard of care:

(1) The health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs, in the state of Washington, acting in the same or similar circumstances;

[2011 RCW Supp—page 86]

(2) Such failure was a proximate cause of the injury complained of. [2011 c 336 § 251; 1983 c 149 § 2; 1975-'76 2nd ex.s. c 56 § 9.]

Additional notes found at www.leg.wa.gov

7.70.050 Failure to secure informed consent—Necessary elements of proof—Emergency situations. (1) The following shall be necessary elements of proof that injury resulted from health care in a civil negligence case or arbitration involving the issue of the alleged breach of the duty to secure an informed consent by a patient or his or her representatives against a health care provider:

(a) That the health care provider failed to inform the patient of a material fact or facts relating to the treatment;

(b) That the patient consented to the treatment without being aware of or fully informed of such material fact or facts;

(c) That a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts;

(d) That the treatment in question proximately caused injury to the patient.

(2) Under the provisions of this section a fact is defined as or considered to be a material fact, if a reasonably prudent person in the position of the patient or his or her representative would attach significance to it deciding whether or not to submit to the proposed treatment.

(3) Material facts under the provisions of this section which must be established by expert testimony shall be either:

(a) The nature and character of the treatment proposed and administered;

(b) The anticipated results of the treatment proposed and administered;

(c) The recognized possible alternative forms of treatment; or

(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment administered and in the recognized possible alternative forms of treatment, including nontreatment.

(4) If a recognized health care emergency exists and the patient is not legally competent to give an informed consent and/or a person legally authorized to consent on behalf of the patient is not readily available, his or her consent to required treatment will be implied. [2011 c 336 § 252; 1975-'76 2nd ex.s. c 56 § 10.]

Additional notes found at www.leg.wa.gov

Chapter 7.84 RCW NATURAL RESOURCE INFRINGEMENTS

Sections

7.84.030	Notice of infraction—Issuance, service, filing.
7.84.140	Authority to delegate or accept enforcement authority over natural resource infractions.

7.84.030 Notice of infraction—Issuance, service, filing. (1) An infraction proceeding is initiated by the issuance and service of a printed notice of infraction and filing of a printed or electronic copy of the notice of infraction.

(2) A notice of infraction may be issued by a person authorized to enforce the provisions of the title or chapter in which the infraction is established, or by a person authorized by an interlocal agreement entered into under RCW 7.84.140, when the infraction occurs in that person's presence.

(3) A court may issue a notice of infraction if a person authorized to enforce the provisions of the title or chapter in which the infraction is established, or by a person authorized by an interlocal agreement entered into under RCW 7.84.140, files with the court a written statement that the infraction was committed in that person's presence or that the officer has reason to believe an infraction was committed.

(4) Service of a notice of infraction issued under subsection (2) or (3) of this section shall be as provided by court rule.

(5) A notice of infraction shall be filed with a court having jurisdiction within five days of issuance, excluding Saturdays, Sundays, and holidays. [2011 c 320 § 14; 2009 c 174 § 1; 2004 c 43 § 2; 1987 c 380 § 3.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Effective date—2004 c 43: See note following RCW 7.80.150.

7.84.140 Authority to delegate or accept enforcement authority over natural resource infractions. The director chosen by the state parks and recreation commission, the commissioner of public lands, and the director of the department of fish and wildlife are each authorized to delegate and accept enforcement authority over natural resource infractions to or from the other agencies through an agreement entered into under the interlocal cooperation act, chapter 39.34 RCW. [2011 c 320 § 13.]

Effective date—2011 c 320: See note following RCW 79A.80.005.

Findings—Intent—2011 c 320: See RCW 79A.80.005.

Title 8

EMINENT DOMAIN

Chapters

- 8.04** Eminent domain by state.
- 8.08** Eminent domain by counties.
- 8.12** Eminent domain by cities.
- 8.16** Eminent domain by school districts.
- 8.20** Eminent domain by corporations.
- 8.26** Relocation assistance—Real property acquisition policy.

Chapter 8.04 RCW

EMINENT DOMAIN BY STATE

Sections

- 8.04.090 Order for immediate possession—Payment of tender into court.
- 8.04.094 Demand for trial—Time of trial—Decree of appropriation.
- 8.04.140 Claimants, payment of—Conflicting claims.
- 8.04.150 Appellate review.
- 8.04.170 Condemnation for military purposes.

8.04.090 Order for immediate possession—Payment of tender into court. In case the state shall require immediate possession and use of the property sought to be con-

demned, and an order of necessity shall have been granted, and no review has been taken therefrom, the attorney general may stipulate with respondents in accordance with the provisions of this section and RCW 8.04.092 and 8.04.094 for an order of immediate possession and use, and file with the clerk of the court wherein the action is pending, a certificate of the state's requirement of immediate possession and use of the land, which shall state the amount of money offered to the respondents and shall further state that such offer constitutes a continuing tender of such amount. The attorney general shall file a copy of the certificate with the office of financial management, which forthwith shall issue and deliver to him or her a warrant payable to the order of the clerk of the court wherein the action is pending in a sum sufficient to pay the amount offered, which shall forthwith be paid into the registry of the court. The court without further notice to respondent shall enter an order granting to the state the immediate possession and use of the property described in the order of necessity, which order shall bind the petitioner to pay the full amount of any final judgment of compensation and damages which may thereafter be awarded for the taking and appropriation of the lands, real estate, premises, or other property described in the petition and for the injury, if any, to the remainder of the lands, real estate, premises, or other property from which they are to be taken by reason of such taking and appropriation, after offsetting against any and all such compensation and damages the special benefits, if any, accruing to such remainder by reason of the appropriation and use by the state of the lands, real estate, premises, or other property described in the petition. The moneys paid into court may at any time after entry of the order of immediate possession, be withdrawn by respondents, by order of the court, as their interests shall appear. [2011 c 336 § 253; 1979 c 151 § 7; 1973 c 106 § 7; 1955 c 213 § 4. Prior: 1951 c 177 § 1; 1925 ex.s. c 98 § 1, part; RRS § 894, part.]

8.04.094 Demand for trial—Time of trial—Decree of appropriation. If any respondent shall elect to demand a trial for the purpose of assessing just compensation and damages arising from the taking, he or she shall so move within sixty days from the date of entry of the order of immediate possession and use, and the issues shall be brought to trial within one year from the date of such order unless good and sufficient proof shall be offered and it shall appear therefrom to the court that the hearing could not have been held within said year. In the event that no such demand be timely made or having been timely made, shall not be brought to trial within the limiting period, the court, upon application of the state, shall enter a decree of appropriation for the amount paid into court under the provisions of RCW 8.04.090, as the total sum to which respondents are entitled, and such decree shall be final and nonappealable. [2011 c 336 § 254; 1951 c 177 § 3.]

8.04.140 Claimants, payment of—Conflicting claims. Any person, corporation, or county claiming to be entitled to any money paid into court, as provided in RCW 8.04.010 through 8.04.160, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he or she or it is entitled to the same, the court shall make an order direct-

ing the payment to such claimant the portion of such money as he or she or it shall be found entitled to; but if, upon application, the court or judge thereof should decide that the title to the land, real estate, or premises specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he or she shall refuse such order until such action is commenced and the conflicting claims to such land, real estate, or premises be determined according to law. [2011 c 336 § 255; 1891 c 74 § 8; RRS § 898.]

8.04.150 Appellate review. Either party may seek appellate review of the judgment for damages entered in the superior court within thirty days after the entry of judgment as aforesaid, and such review shall bring before the supreme court or the court of appeals the propriety and justness of the amount of damages in respect to the parties to the review: PROVIDED HOWEVER, That upon such review no bond shall be required: AND PROVIDED FURTHER, That if the owner of land, the real estate or premises accepts the sum awarded by the jury, the court or the judge thereof, he or she shall be deemed thereby to have waived conclusively appellate review, and final judgment by default may be rendered in the superior court as in other cases: PROVIDED FURTHER, That no review shall operate so as to prevent the said state of Washington from taking possession of such property pending review after the amount of said award shall have been paid into court. [2011 c 336 § 256; 1988 c 202 § 8; 1971 c 81 § 36; 1891 c 74 § 9; RRS § 899.]

Rules of court: Cf. *RAP* 5.2, 8.1, 18.22.

Additional notes found at www.leg.wa.gov

8.04.170 Condemnation for military purposes. Whenever the governor, as commander-in-chief of the military of this state, shall deem it necessary to acquire any lands, real estate, premises, or other property for any military purpose or purposes of this state, either to add to, enlarge, increase, or otherwise improve state military facilities now or hereafter existing or to establish new facilities, the acquisition of which shall have been provided for by the state, by a county or by a city, or by either, all or any thereof, upon certificate by the governor of such necessity, proceedings for the condemnation, appropriation, and taking of the lands, real estate, premises, or other property so certified to be necessary shall be taken as follows:

Where the state is to pay the purchase price it shall be the duty of the attorney general, upon receipt by him or her of said certificate of the governor, to file a petition in the superior court for the county in which such lands, real estate, premises, or other property may be situate praying such condemnation, appropriating, and taking, which petition shall be prosecuted to a final determination in the manner by law provided for other condemnation suits brought by or on behalf of the state;

Where a county is to pay the purchase price it shall be the duty of the prosecuting attorney of said county upon receipt by him or her of said certificate of the governor, to file a petition in the superior court for said county praying such condemnation, appropriation, and taking, which petition shall be prosecuted to a final determination in the manner by law pro-

vided for other condemnation suits brought by or on behalf of a county;

Where a city is to pay the purchase price it shall be the duty of the corporation counsel, city attorney, or other head of the legal department of said city, upon receipt by him or her of said certificate of the governor, to file a petition in the superior court for the county in which said city is situate, praying such condemnation, appropriation, and taking, which petition shall be prosecuted to a final determination in the manner by law provided for other condemnation suits brought by or on behalf of such city;

Where the purchase price is to be paid by the state, a county, and a city or by the state and a county, or by the state and a city, or by a county and a city, the condemnation shall be prosecuted to a final determination in the manner by law provided for either or any thereof, as the governor may determine, which determination shall be final and conclusive. [2011 c 336 § 257; 1917 c 153 § 1; RRS § 900-1.]

Notice where military land is involved: RCW 8.28.030.

Chapter 8.08 RCW

EMINENT DOMAIN BY COUNTIES

Sections

8.08.060	Judgment—Decree of appropriation.
8.08.080	Appellate review.

8.08.060 Judgment—Decree of appropriation. Upon the verdict of the jury or upon the determination of the court of the compensation or damages to be paid for the real estate or property appropriated, judgment shall be entered against such county in favor of the owner or owners of the real estate or property so appropriated for the amount found as just compensation therefor, and upon the payment of such amount by such county to the clerk of such court for the use of the owner or owners or the persons interested in the premises sought to be taken, the court shall enter a decree of appropriation of the real estate or property sought to be taken, thereby vesting the title to the same in such county; and a certified copy of such decree of appropriation may be filed in the office of the county auditor of the county wherein the real estate taken is situated and shall be recorded by such auditor like a deed of real estate and with like effect. The money so paid to the clerk of the court shall be by him or her paid to the person or persons entitled thereto upon the order of the court. [2011 c 336 § 258; 1949 c 79 § 6; Rem. Supp. 1949 § 3991-11.]

8.08.080 Appellate review. Either party may seek appellate review of the judgment for compensation of the damages awarded in the superior court within thirty days after the entry of judgment as aforesaid, and such review shall bring before the supreme court or the court of appeals the propriety and justice of the amount of damage in respect to the parties to the review: PROVIDED, That upon such review no bonds shall be required: AND PROVIDED FURTHER, That if the owner of land, real estate, or premises accepts the sum awarded by the jury or the court, he or she shall be deemed thereby to have waived conclusively appellate review, and final judgment by default may be rendered in the superior court as in other cases. [2011 c 336 § 259; 1988

c 202 § 9; 1971 c 81 § 38; 1949 c 79 § 8; Rem. Supp. 1949 § 3991-13.]

Additional notes found at www.leg.wa.gov

Chapter 8.12 RCW EMINENT DOMAIN BY CITIES

Sections

8.12.120	Interested party may be brought in.
8.12.200	Judgment—Appellate review—Payment of award into court.
8.12.260	Appointment of board of eminent domain commissioners— Terms of office.
8.12.270	Oath of commissioners—Compensation.
8.12.360	Certification of roll to treasurer.
8.12.370	Treasurer's notice to pay when assessments immediately payable.
8.12.380	Notice by mail—Penalty for default.
8.12.430	Notice to pay—Due date of installments—Penalty—Interest.
8.12.440	Bond owner may enforce collection.
8.12.450	Bondholder's remedy limited to assessments.
8.12.490	Record of payment and redemption.
8.12.500	Liability of treasurer.

8.12.120 Interested party may be brought in. Such jury shall also ascertain the just compensation to be paid to any person claiming an interest in any lot, parcel of land, or property which may be taken or damaged by such improvement, whether or not such person's name or such lot, parcel of land, or other property is mentioned or described in such petition: PROVIDED, Such person shall first be admitted as a party defendant to said suit by such court and shall file a statement of his or her interest in and description of the lot, parcel of land, or other property in respect to which he or she claims compensation. [2011 c 336 § 260; 1907 c 153 § 8; RRS § 9222. Prior: 1905 c 55 § 8; 1893 c 84 § 8.]

Rules of court: *CR 17 through 25.*

8.12.200 Judgment—Appellate review—Payment of award into court. Any final judgment or judgments rendered by said court upon any finding or findings of any jury or juries, or upon any finding or findings of the court in case a jury be waived, shall be lawful and sufficient condemnation of the land or property to be taken, or of the right to damage the same in the manner proposed, upon the payment of the amount of such findings and all costs which shall be taxed as in other civil cases, provided that in case any defendant recovers no damages, no costs shall be taxed. Such judgment or judgments shall be final and conclusive as to the damages caused by such improvement unless appellate review is sought, and review of the same shall not delay proceedings under said ordinance, if such city shall pay into court for the owners and parties interested, as directed by the court, the amount of the judgment and costs, and such city, after making such payment into court, shall be liable to such owner or owners or parties interested for the payment of any further compensation which may at any time be finally awarded to such parties seeking review of said proceeding, and his or her costs, and shall pay the same on the rendition of judgment therefor, and abide any rule or order of the court in relation to the matter in controversy. In case of review by the supreme court or the court of appeals of the state by any party to the proceedings the money so paid into the superior court by such city, as aforesaid, shall remain in the custody of said superior court until the final determination of the proceedings. If the

owner of the land, real estate, premises, or other property accepts the sum awarded by the jury or the court, he or she shall be deemed thereby to have waived conclusively appellate review and final judgment may be rendered in the superior court as in other cases. [2011 c 336 § 261; 1993 c 14 § 1; 1988 c 202 § 10; 1971 c 81 § 39; 1907 c 153 § 16; 1905 c 55 § 16; 1893 c 84 § 16; RRS § 9230. FORMER PART OF SECTION: 1907 c 153 § 51, part; RRS § 9276, part, now codified in RCW 8.12.090. Prior: 1905 c 55 § 50; 1893 c 84 § 50, part.]

Additional notes found at www.leg.wa.gov

8.12.260 Appointment of board of eminent domain commissioners—Terms of office. At any time after June 11, 1907, any such city may petition the superior court of the county in which said city is situated, that a board of eminent domain commissioners be appointed to make assessments in all condemnation proceedings instituted by such city. Said superior court shall thereupon, by order duly entered in its records, appoint three competent persons as commissioners who shall be known as and who shall constitute the "board of eminent domain commissioners of the city of . . .," and who shall thereafter make assessments in all condemnation proceedings instituted by such city. The order of the court shall provide that one of the members of such board shall serve for one year, one for two years, and one for three years, from the date of their appointment and until their successors are appointed and qualified. Annually thereafter, said superior court shall appoint one such person as such commissioner, whose term shall begin on the same day of the month on which the first order of appointment was made and continue for three years thereafter and until his or her successor is appointed and qualified. If any commissioner shall be disqualified in any proceeding by reason of interest, or for any other reason, said superior court shall appoint some other competent person to act in his or her place in such proceeding. [2011 c 336 § 262; 1907 c 153 § 21; RRS § 9235. Prior: 1905 c 55 § 21; 1893 c 84 § 21.]

8.12.270 Oath of commissioners—Compensation. All commissioners, before entering upon their duties, shall take and subscribe an oath that they will faithfully perform the duties of the office to which they are appointed, and will to the best of their abilities make true and impartial assessments according to law. Every commissioner shall receive compensation at the rate of ten dollars per day for each day actually spent in making the assessment herein provided for: PROVIDED, That in any city of the first class the superior court of the county in which said city is situated may, by order duly entered in its record, fix the compensation of each commissioner in an amount in no case to exceed twenty-five dollars per day for each day actually spent in making the assessment herein provided for. Each commissioner shall file in the proceeding in which he or she has made such assessment his or her account, stating the number of days he or she has actually spent in said proceeding, and upon the approval of said account by the judge before whom the proceeding is pending, the comptroller or city clerk of such city shall issue a warrant in the amount approved by the judge upon the special fund created to pay the awards and costs of said proceed-

ing, and the fees of such commissioner so paid shall be included in the cost and expense of such proceedings. In case such commissioners are, during the same period, or parts thereof, engaged in making assessments in different proceedings, in rendering their accounts they shall apportion them to the different proceedings in proportion to the amount of time, actually spent by them on the assessment in each proceeding. [2011 c 336 § 263; 1947 c 139 § 1; 1929 c 87 § 1; 1915 c 154 § 2; 1907 c 153 § 22; Rem. Supp. 1947 § 9236. Prior: 1905 c 55 § 22, part; 1893 c 84 § 22, part.]

8.12.360 Certification of roll to treasurer. The clerk of the court in which such judgment is rendered shall certify a copy of the assessment roll and judgment to the treasurer of the city, or if there has been an appeal taken from any part of such judgment, then he or she shall certify such part of the roll and judgment as is not included in such appeal, and the remainder when final judgment is rendered: PROVIDED, That if upon such appeal, the judgment of the superior court shall be affirmed, the assessments on such property as to which appeal has been taken shall bear interest at the same rate and from the same date which other assessments not paid within the time hereafter provided shall bear. Such copy of the assessment roll shall describe the lots, blocks, tracts, parcels of land, or other property assessed, and the respective amounts assessed on each, and shall be sufficient warrant to the city treasurer to collect the assessment therein specified. In no case, however, shall a copy of such assessment roll and judgment be certified to the city treasurer unless and until the awards of the jury shall have first been accepted by the city council or other legislative body as provided by law, or the time for rejecting the same shall have expired. [2011 c 336 § 264; 1915 c 154 § 5; 1907 c 153 § 31; RRS § 9245. Prior: 1905 c 55 § 31; 1893 c 84 § 31.]

8.12.370 Treasurer's notice to pay when assessments immediately payable. Whenever the assessment for any such improvement shall be immediately payable, the owner of any such lot, tract, or parcel of land or other property so assessed may pay such entire assessment, or any part thereof, without interest, within thirty days after the notice of such assessment.

The city treasurer shall, as soon as the certified copy of the assessment roll has been placed in his or her hands for collection, publish a notice in the official newspaper of the city for two consecutive daily, or two consecutive weekly issues, and then by posting four notices thereof in public places along the line of the proposed improvement, that the said roll is in his or her hands for collection, and that any assessment thereon, or any part thereof, may be paid within thirty days from the date of the first publication or posting of said notice, without penalty, interest or costs, and if not so paid, the same shall thereupon become delinquent. [2011 c 336 § 265; 1915 c 154 § 6; 1907 c 153 § 32; RRS § 9246. Prior: 1905 c 55 § 32; 1893 c 84 § 32.]

8.12.380 Notice by mail—Penalty for default. It shall be the duty of the city treasurer into whose hands such judgment and assessment roll shall come, to mail notices of such assessment to the persons whose names appear on the assess-

ment roll, so far as the addresses of such persons are known to him or her. Any such treasurer omitting so to do, shall be liable to a penalty of five dollars for every such omission; but the validity of the special assessment shall not be affected by such omission. When any assessment or assessments are paid, it shall be the duty of the treasurer to write the word "paid" opposite the same together with the name and post office address of the person making the payment and the date of payment. The owner may annually notify the treasurer of his or her address and it shall be the duty of the treasurer to mail the notice above provided for to such address. [2011 c 336 § 266; 1907 c 153 § 33; RRS § 9247. Prior: 1905 c 55 § 33; 1893 c 84 § 33.]

8.12.430 Notice to pay—Due date of installments—Penalty—Interest. Whenever the assessment for any such improvement shall be payable in installments, the owner of any lot, tract, or parcel of land or other property charged with any such assessment may pay the assessment or any portion thereof, without interest, within thirty days after such notice of the assessment.

The city treasurer shall, as soon as the certified copy of the assessment roll has been placed in his or her hands for collection, publish a notice in the official newspaper of the city for two consecutive daily or two consecutive weekly issues, that the roll is in his or her hands for collection and that any assessment thereon or any portion of any such assessment may be paid at any time within thirty days from the date of the first publication of the notice without penalty, interest, or costs, and the unpaid balance, if any, may be paid in equal annual installments, or any such assessment may be paid at any time after the first thirty days following the date of the first publication of the notice by paying the entire unpaid portion thereof with all penalties and costs attached, together with all interest thereon to the date of delinquency of the first installment thereof next falling due.

The notice shall further state that the first installment of the assessment shall become due and payable during the thirty day period succeeding a date one year after the date of first publication of the notice, and annually thereafter each succeeding installment shall become due and payable in like manner.

If the whole or any portion of any assessment remains unpaid after the first thirty day period herein provided for, interest upon the whole unpaid sum shall be charged at the bond rate, and each year thereafter one of the installments, together with interest due upon the whole of the unpaid balance, shall be collected, except that where the assessment is payable in twenty years, installments of interest only shall be collected for the first ten years, as provided in RCW 8.12.420.

Any installment not paid prior to the expiration of the thirty day period during which the installment is due and payable, shall thereupon become delinquent. All delinquent installments shall be subject to a charge of five percent penalty levied upon both principal and interest due on the installments, and all delinquent installments, except installments of interest when the assessment is payable in twenty years, as provided in RCW 8.12.420, shall, until paid, be subject to a charge for interest at the bond rate.

The bonds herein provided for shall not be issued prior to twenty days after the expiration of the thirty days first above mentioned, but may be issued at any time thereafter. In all cases where any sum is paid as herein provided, the same shall be paid to the city treasurer, or to the officer whose duty it is to collect the assessments, and all sums so paid shall be applied solely to the payment of the awards, interest and costs of the improvements or the redemption of the bonds issued therefor. [2011 c 336 § 267; 1985 c 469 § 4; 1925 ex.s. c 115 § 3; 1915 c 154 § 14; RRS § 9266.]

8.12.440 Bond owner may enforce collection. If the city shall fail, neglect, or refuse to pay said bonds or to promptly collect any such assessments when due, the owner of any such bonds may proceed in his or her own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall in addition to the principal of such bonds and interest thereon, recover five percent of such sum, together with the costs of such suit. Any number of owners of such bonds for any single improvement may join as plaintiffs and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. [2011 c 336 § 268; 1983 c 167 § 14; 1915 c 154 § 15; RRS § 9267.]

Rules of court: CR 17 through 25.

Additional notes found at www.leg.wa.gov

8.12.450 Bondholder's remedy limited to assessments. Neither the holder nor owner of any bond issued under the authority of this chapter shall have any claim therefor against the city by which the same is issued, except from the special assessment made for the improvement for which such bond was issued, but his or her remedy in case of non-payment, shall be confined to the enforcement of such assessments. A copy of this section shall be plainly written, printed, or engraved on each bond so issued. [2011 c 336 § 269; 1915 c 154 § 16; RRS § 9268.]

8.12.490 Record of payment and redemption. Whenever before the sale of any property the amount of any assessment thereon, with interest and costs accrued thereon, shall be paid to the treasurer, he or she shall thereupon mark the same paid, with the date of payment thereof on the assessment roll, and whenever after sale of any property for any assessments, the same shall be redeemed, he or she shall thereupon enter the same redeemed with the date of such redemption on such record. Such entry shall be made on the margin of the record opposite the description of such property. [2011 c 336 § 270; 1907 c 153 § 43; RRS § 9258. Prior: 1905 c 55 § 43; 1893 c 84 § 43.]

8.12.500 Liability of treasurer. If the treasurer shall receive any moneys for assessments, giving a receipt therefor, for any property and afterwards return the same as unpaid, or shall receive the same after making such return, and the same be sold for assessment which has been so paid and receipted for by himself or herself or his or her clerk or assistant, he or she and his or her bond shall be liable to the holder of the certificate given to the purchaser at the sale for the amount of the face of the certificate, and a penalty of fif-

teen percent additional thereto besides legal interest, to be demanded within two years from the date of the sale and recovered in any court having jurisdiction of the amount, and the city shall in no case be liable to the holder of such certificate. [2011 c 336 § 271; 1907 c 153 § 44; RRS § 9259. Prior: 1905 c 55 § 44; 1893 c 84 § 44.]

Chapter 8.16 RCW

EMINENT DOMAIN BY SCHOOL DISTRICTS

Sections

8.16.020	Petition—Contents.
8.16.060	Impaneling of jury.
8.16.110	Judgment—Payment of award—Decree of appropriation.
8.16.130	Appellate review.
8.16.150	Designation of parties—Fees.

8.16.020 Petition—Contents. The board of directors of the school district shall present to the superior court of the state of Washington in and for the county wherein is situated the real estate desired to be acquired for schoolhouse site purposes, a petition, reciting that the board of directors of such school district have selected certain real estate, describing it, as a schoolhouse site, or as additional grounds to an existing site, for such school district; that the site so selected, or some part thereof, describing it, belongs to a person or persons, naming him, her, or them, that such school district has offered to give the owner or owners thereof therefor dollars, and that the owner of such real estate has refused to accept the same therefor; that the board of school directors of such school district and the said owner or owners of such real estate are unable to agree upon the compensation to be paid by such school district to the owner or owners of such real estate therefor, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money by such school district to such owner or owners for the taking of such real estate for the use as a schoolhouse site for such school district; or in case a jury be waived in the manner provided by law in other civil actions in courts of record, then that the compensation to be made as aforesaid, be ascertained and determined by the court, or judge thereof. [2011 c 336 § 272; 1909 p 372 § 2; 1903 c 111 § 2; RRS § 907.]

8.16.060 Impaneling of jury. The jury impaneled to hear the evidence and determine the compensation to be paid to the owner or owners of such real estate desired for such schoolhouse site purpose shall consist of twelve persons unless a less number be agreed upon, and shall be selected, impaneled, and sworn in the same manner that juries in other civil actions are selected, impaneled, and sworn, provided a juror may be challenged for cause on the ground that he or she is a taxpayer of the district seeking the condemnation of any real estate. [2011 c 336 § 273; 1909 p 373 § 6; 1903 c 111 § 6; RRS § 911.]

Juries, civil actions, selection, impaneling and swearing of: Chapters 2.36, 4.44 RCW.

Juries in courts of limited jurisdiction: RCW 2.36.050.

8.16.110 Judgment—Payment of award—Decree of appropriation. Upon the verdict of the jury, or upon the determination by the court of the compensation to be paid for

the property sought to be taken as herein provided, judgment shall be entered against such school district in favor of the owner or owners of the real estate sought to be taken, for the amount found as compensation therefor, and upon the payment of such amount by such school district to the clerk of such court for the use of the owner or owners of, and the persons interested in the premises sought to be taken, the court shall enter a decree of appropriation of the real estate sought to be taken, thereby vesting the title to the same in such school district; and a certified copy of such decree of appropriation may be filed in the office of the county auditor of the county wherein the real estate taken is situated, and shall be recorded by such auditor like a deed of real estate, and with like effect. The money so paid to the clerk of the court shall be by him or her paid to the person or persons entitled thereto, upon the order of the court. [2011 c 336 § 274; 1909 p 374 § 11; 1903 c 111 § 11; RRS § 916.]

Recording of deeds of real estate: Title 65 RCW.

8.16.130 Appellate review. Either party may seek appellate review of the judgment for compensation awarded for the property taken, entered in the superior court, to the supreme court or the court of appeals of the state within sixty days after the entry of the judgment, and such review shall bring before the supreme court or the court of appeals the justness of the compensation awarded for the property taken, and any error occurring on the hearing of such matter, prejudicial to the party appealing: PROVIDED, HOWEVER, That if the owner or owners of the land taken accepts the sum awarded by the jury or court, he, she, or they shall be deemed thereby to have waived appellate review. [2011 c 336 § 275; 1988 c 202 § 12; 1971 c 81 § 41; 1909 p 375 § 13; RRS § 918. Prior: 1903 c 111 § 13.]

Additional notes found at www.leg.wa.gov

8.16.150 Designation of parties—Fees. In all proceedings under this chapter the school district seeking to acquire title to real estate for a schoolhouse site, shall be denominated plaintiff, and all other persons interested therein shall be denominated defendants; and in all such proceedings the clerk of the superior court wherein any such proceeding is brought shall charge nothing for his or her services, except in taking an appeal from the judgment entered in the superior court. [2011 c 336 § 276; 1909 p 375 § 15; 1903 c 111 § 15; RRS § 920.]

Chapter 8.20 RCW

EMINENT DOMAIN BY CORPORATIONS

Sections

8.20.010	Petition for appropriation—Contents.
8.20.110	Claimants, payment of—Conflicting claims.
8.20.120	Appellate review.

8.20.010 Petition for appropriation—Contents. Any corporation authorized by law to appropriate land, real estate, premises, or other property for right-of-way or any other corporate purposes, may present to the superior court of the county in which any land, real estate, premises, or other property sought to be appropriated shall be situated, or to the

judge of such superior court in any county where he or she has jurisdiction or is holding court, a petition in which the land, real estate, premises, or other property sought to be appropriated shall be described with reasonable certainty, and setting forth the name of each and every owner, encumbrancer, or other person or party interested in the same, or any part thereof, so far as the same can be ascertained from the public records, the object for which the land is sought to be appropriated, and praying that a jury be impaneled to ascertain and determine the compensation to be made in money, irrespective of any benefit from any improvement proposed by such corporation, to such owner or owners, respectively, and to all tenants, encumbrancers, and others interested, for the taking or injuriously affecting such lands, real estate, premises, or other property, or in case a jury be waived as in other civil cases in courts of record in the manner prescribed by law, then that the compensation to be made, as aforesaid, be ascertained and determined by the court, or judge thereof. [2011 c 336 § 277; 1890 p 294 § 1. Prior: 1888 p 58 § 1; RRS § 921.]

8.20.110 Claimants, payment of—Conflicting claims.

Any person, corporation, state or county, claiming to be entitled to any money paid into court, as provided in RCW 8.20.010 through 8.20.140 may apply to the court therefor, and upon furnishing evidence satisfactory to the court that he, she, or it is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he, she, or it shall be found entitled to; but if, upon application, the court or judge thereof shall decide that the title to the land, real estate, premises, or other property specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he or she shall refuse such order until such action is commenced and the conflicting claims to such land, real estate, premises, or other property be determined according to law. [2011 c 336 § 278; 1890 p 299 § 8; RRS § 930. Prior: 1888 p 61 § 8.]

8.20.120 Appellate review. Either party may seek appellate review of the judgment for damages entered in the superior court within thirty days after the entry of judgment as aforesaid and such review shall bring before the supreme court or the court of appeals the propriety and justness of the amount of damages in respect to the parties to the review: PROVIDED, HOWEVER, That no bond shall be required of any person interested in the property sought to be appropriated by such corporation, but in case the corporation appropriating such land, real estate, premises, or other property is appellant, it shall give a bond like that prescribed in RCW 8.20.130, to be executed, filed, and approved in the same manner: AND PROVIDED FURTHER, That if the owner of the land, real estate, premises, or other property accepts the sum awarded by the jury, the court, or the judge thereof, he or she shall be deemed thereby to have waived conclusively appellate review, and final judgment by default may be rendered in the superior court as in other cases. [2011 c 336 § 279; 1988 c 202 § 14; 1971 c 81 § 43; 1890 p 300 § 9; RRS § 931. Prior: 1888 p 61 § 9.]

Additional notes found at www.leg.wa.gov

Chapter 8.26 RCW

RELOCATION ASSISTANCE—
REAL PROPERTY ACQUISITION POLICY

Sections

8.26.020	Definitions.
8.26.085	Lead agency's rule-making authority—Compliance date.
8.26.180	Acquisition procedures.
8.26.190	Acquisition of buildings, structures, and improvements.

8.26.020 Definitions. As used in this chapter:

(1) The term "state" means any department, commission, agency, or instrumentality of the state of Washington.

(2) The term "local public agency" applies to any county, city or town, or other municipal corporation or political subdivision of the state and any person who has the authority to acquire property by eminent domain under state law, or any instrumentality of any of the foregoing.

(3) The term "person" means any individual, partnership, corporation, or association.

(4)(a) The term "displaced person" means, except as provided in (c) of this subsection, any person who moves from real property, or moves his or her personal property from real property:

(i) As a direct result of a written notice of intent to acquire, or the acquisition of, such real property in whole or in part for a program or project undertaken by a displacing agency; or

(ii) On which the person is a residential tenant or conducts a small business, a farm operation, or a business defined in this section, as a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, under a program or project undertaken by a displacing agency in any case in which the displacing agency determines that the displacement is permanent.

(b) Solely for the purposes of RCW 8.26.035 (1) and (2) and 8.26.065, the term "displaced person" includes any person who moves from real property, or moves his or her personal property from real property:

(i) As a direct result of a written notice of intent to acquire, or the acquisition of, other real property in whole or in part on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or

(ii) As a direct result of rehabilitation, demolition, or such other displacing activity as the lead agency may prescribe, of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by a displacing agency where the displacing agency determines that the displacement is permanent.

(c) The term "displaced person" does not include:

(i) A person who has been determined, according to criteria established by the lead agency, to be either unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this chapter; or

(ii) In any case in which the displacing agency acquires property for a program or project, any person (other than a person who was an occupant of the property at the time it was acquired) who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

(5) The term "business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or other personal property;

(b) For the sale of services to the public;

(c) By a nonprofit organization; or

(d) Solely for the purposes of RCW 8.26.035, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(6) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or for home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(7) The term "comparable replacement dwelling" means any dwelling that is (a) decent, safe, and sanitary; (b) adequate in size to accommodate the occupants; (c) within the financial means of the displaced person; (d) functionally equivalent; (e) in an area not subject to unreasonably adverse environmental conditions; and (f) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(8) For purposes of RCW 8.26.180 through 8.26.200, the term "acquiring agency" means:

(a) A state agency or local public agency that has the authority to acquire property by eminent domain under state law; or

(b) Any state agency, local public agency, or person that (i) does not have the authority to acquire property by eminent domain under state law and (ii) has been designated an "acquiring agency" under rules adopted by the lead agency. However, the lead agency may only designate a state agency, local public agency, or a person as an "acquiring agency" to the extent that it is necessary in order to qualify for federal financial assistance.

(9) The term "displacing agency" means the state agency, local public agency, or any person carrying out a program or project, with federal or state financial assistance, that causes a person to be a displaced person.

(10) The term "federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(11) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of this state, together with the credit instruments, if any, secured thereby.

(12) The term "lead agency" means the Washington state department of transportation.

(13) The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an ade-

quately described property as of a specific date, supported by the presentation and analysis of relevant market information. [2011 c 336 § 280; 2003 c 254 § 1; 1988 c 90 § 2; 1972 ex.s. c 34 § 1; 1971 ex.s. c 240 § 2.]

Additional notes found at www.leg.wa.gov

8.26.085 Lead agency's rule-making authority—Compliance date. (1) The lead agency, after full consultation with the *department of general administration, shall adopt rules and establish such procedures as the lead agency may determine to be necessary to assure:

(a) That the payments and assistance authorized by this chapter are administered in a manner that is fair and reasonable and as uniform as practicable;

(b) That a displaced person who makes proper application for a payment authorized for that person by this chapter is paid promptly after a move or, in hardship cases, is paid in advance; and

(c) That a displaced person who is aggrieved by a program or project that is under the authority of a state agency or local public agency may have his or her application reviewed by the state agency or local public agency.

(2) The lead agency, after full consultation with the *department of general administration, may adopt such other rules and procedures, consistent with the provisions of this chapter, as the lead agency deems necessary or appropriate to carry out this chapter.

(3) State agencies and local public agencies shall comply with the rules adopted pursuant to this section by April 2, 1989. [2011 c 336 § 281; 1988 c 90 § 8.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Additional notes found at www.leg.wa.gov

8.26.180 Acquisition procedures. Every acquiring agency shall, to the greatest extent practicable, be guided by the following policies:

(1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his or her designated representative shall be given an opportunity to accompany at least one appraiser of the acquiring agency during his or her inspection of the property, except that the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition of property with a low fair market value.

(3) Before the initiation of negotiations for real property, the acquiring agency shall establish an amount which it believes to be just compensation therefor, and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The acquiring agency shall provide the owner of

[2011 RCW Supp—page 94]

real property to be acquired with a written statement of, and summary of the basis for, the amount it established as just compensation. Where appropriate the just compensation for the real property acquired, for damages to remaining real property, and for benefits to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or deposited with a court having jurisdiction of condemnation of such property, in accordance with applicable law, for the benefit of the owner an amount not less than the acquiring agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling or to move his or her business or farm operation without at least ninety days written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time of condemnation be advanced, *on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his or her real property.

(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the agency concerned shall offer to acquire that remnant. For the purposes of this chapter, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and that the head of the agency concerned has determined has little or no value or utility.

(10) A person whose real property is being acquired in accordance with this chapter may, after the person has been fully informed of his or her right to receive just compensation for the property, donate the property, any part thereof, any interest therein, or any compensation paid for it to any agency as the person may determine. [2011 c 336 § 282; 1988 c 90 § 12; 1971 ex.s. c 240 § 18.]

***Reviser's note:** The word "or" may have been intended. The language of subsection (7) of this section is similar to language found in 49 C.F.R. 24.102(h).

Additional notes found at www.leg.wa.gov

8.26.190 Acquisition of buildings, structures, and improvements. (1) Where any interest in real property is acquired, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which is required to be

removed from such real property or which is determined to be adversely affected by the use to which such real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under subsection (1) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant of the lands, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his or her term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the owner of such building, structure, or improvement.

(3) Payment for such building, structure, or improvement under subsection (1) of this section shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release all his or her right, title, and interest in and to such improvements. Nothing with regard to the above-mentioned acquisition of buildings, structures, or other improvements shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with other laws of this state. [2011 c 336 § 283; 1988 c 90 § 13; 1971 ex.s. c 240 § 19.]

Additional notes found at www.leg.wa.gov

8.28.010 Where state land is involved—Service of process—Filing of decree—Duty of land commissioner. In all condemnation proceedings brought for the purpose of appropriating any public land owned by the state or in which the state has an interest, service of process shall be made upon the commissioner of public lands.

When in any condemnation proceeding a decree is entered appropriating public lands owned by the state or in which the state has an interest, or any interest in or rights over such lands, it shall be the duty of the plaintiff to cause to be filed in the office of the commissioner of public lands a certified copy of such decree, together with a plat of the lands appropriated and the lands contiguous thereto, in form and substance as prescribed and required by the commissioner of public lands, showing in detail the lands appropriated, and to pay to the commissioner of public lands, or into the registry of the court, the amount of compensation and damages fixed and awarded in the decree. Upon receipt of such decree, plat, compensation and damages, the commissioner of public lands shall examine the same, and if he or she shall find that the final decree and proceedings comply with the original petition and notice and any amendment duly authorized, and that no additional interest of the state has been taken or appropriated through error or mistake, he or she shall cause notations thereof to be made upon the abstracts, records and tract books in his or her office, and shall issue to the plaintiff

his or her certificate, reciting compliance, in substance, with the above requirements, particularly describing the lands appropriated, and shall forthwith transmit the amount received as compensation and damages to the state treasurer, as in the case of sale of land, and the subdivision of land through which any right-of-way is appropriated shall thereafter be sold or leased subject to the right-of-way. [2011 c 336 § 284; 1927 c 255 § 104; RRS § 7797-104. Formerly RCW 8.28.010 and 8.28.020.]

Title 9

CRIMES AND PUNISHMENTS

Chapters

- 9.01** General provisions.
- 9.03** Abandoned refrigeration equipment.
- 9.04** Advertising, crimes relating to.
- 9.16** Brands and marks, crimes relating to.
- 9.18** Bidding offenses.
- 9.38** False representations.
- 9.41** Firearms and dangerous weapons.
- 9.44** Petition misconduct.
- 9.45** Frauds and swindles.
- 9.46** Gambling—1973 act.
- 9.47** Gambling.
- 9.47A** Inhaling toxic fumes.
- 9.51** Juries, crimes relating to.
- 9.54** Stolen property restoration.
- 9.55** Legislature, crimes relating to.
- 9.61** Malicious mischief—Injury to property.
- 9.62** Malicious prosecution—Abuse of process.
- 9.68** Obscenity and pornography.
- 9.68A** Sexual exploitation of children.
- 9.73** Privacy, violating right of.
- 9.81** Subversive activities.
- 9.82** Treason.
- 9.91** Miscellaneous crimes.
- 9.92** Punishment.
- 9.94A** Sentencing reform act of 1981.
- 9.95** Indeterminate sentences.
- 9.96** Restoration of civil rights.
- 9.98** Prisoners—Untried indictments, informations, complaints.
- 9.100** Agreement on detainees.

Chapter 9.01 RCW GENERAL PROVISIONS

Sections

- 9.01.110 Omission, when not punishable.

9.01.110 Omission, when not punishable. No person shall be punished for an omission to perform an act when such act has been performed by another acting in his or her behalf, and competent to perform it. [2011 c 336 § 285; 1909 c 249 § 23; RRS § 2275.]

Chapter 9.03 RCW ABANDONED REFRIGERATION EQUIPMENT

Sections

- 9.03.020 Permitting unused equipment to remain on premises.

9.03.040 Keeping or storing equipment for sale.

9.03.020 Permitting unused equipment to remain on premises. Any owner, lessee, or manager who knowingly permits such an unused refrigerator, icebox, or deep freeze locker to remain on the premises under his or her control without having the door removed or a portion of the latch mechanism removed to prevent latching or locking of the door is guilty of a misdemeanor. [2011 c 336 § 286; 1955 c 298 § 2.]

9.03.040 Keeping or storing equipment for sale. Any person who keeps or stores refrigerators, iceboxes, or deep freeze lockers for the purpose of selling or offering them for sale shall not be guilty of a violation of this chapter if he or she takes reasonable precautions to effectively secure the door of any refrigerator, icebox, or deep freeze locker held for purpose of sale so as to prevent entrance of children small enough to fit into such articles. [2011 c 336 § 287; 1955 c 298 § 4.]

Chapter 9.04 RCW

ADVERTISING, CRIMES RELATING TO

Sections

9.04.080 False, misleading, deceptive advertising—Assurance of discontinuance of unlawful practice.

9.04.080 False, misleading, deceptive advertising—Assurance of discontinuance of unlawful practice. In the enforcement of RCW 9.04.050 through 9.04.080 the official enforcing RCW 9.04.050 through 9.04.080 may accept an assurance of discontinuance of any act or practice deemed in violation of RCW 9.04.050 through 9.04.080, from any person engaging in, or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county. A violation of such assurance shall constitute prima facie proof of a violation of RCW 9.04.050 through 9.04.080: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney. [2011 c 336 § 288; 1961 c 189 § 4.]

Chapter 9.16 RCW

BRANDS AND MARKS, CRIMES RELATING TO

Sections

9.16.010 Removing lawful brands.
 9.16.020 Imitating lawful brand.
 9.16.060 Fraudulent registration of trademark.
 9.16.100 Use of the words "sterling silver," etc.
 9.16.110 Use of words "coin silver," etc.
 9.16.120 Use of the word "sterling" on mounting.
 9.16.130 Use of the words "coin silver" on mounting.
 9.16.140 Unlawfully marking article made of gold.

9.16.010 Removing lawful brands. Every person who shall willfully deface, obliterate, remove, or alter any mark or brand placed by or with the authority of the owner thereof on

[2011 RCW Supp—page 96]

any shingle bolt, log or stick of timber, or on any horse, mare, gelding, mule, cow, steer, bull, sheep, goat or hog, shall be punished by imprisonment in a state correctional facility for not more than five years, or by imprisonment in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment. [2011 c 96 § 4; 1992 c 7 § 3; 1909 c 249 § 342; Code 1881 § 839; 1873 p 191 § 54; RRS § 2594.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Forest product brands and marks, falsifying, etc.: RCW 76.36.110, 76.36.120.

9.16.020 Imitating lawful brand. Every person who, in any county, places upon any property, any brand or mark in the likeness or similitude of another brand or mark filed with the county auditor of such county by the owner thereof as a brand or mark for the designation or identification of a like kind of property, is:

(1) If done with intent to confuse or commingle such property with, or to appropriate to his or her own use, the property of such other owner, guilty of a felony, punishable by imprisonment in a state correctional facility for not more than five years, or by imprisonment in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment; or

(2) If done without such intent, guilty of a misdemeanor. [2011 c 96 § 5; 1992 c 7 § 4; 1909 c 249 § 343; RRS § 2595.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

9.16.060 Fraudulent registration of trademark. Every person who shall for himself or herself, or on behalf of any other person, corporation, association, or union, procure the filing of any label, trademark, term, design, device, or form of advertisement, with the secretary of state by any fraudulent means, shall be guilty of a misdemeanor. [2011 c 336 § 289; 1909 c 249 § 347; RRS § 2599.]

Trademark registration: Chapter 19.77 RCW.

9.16.100 Use of the words "sterling silver," etc. Every person who shall make, sell or offer to sell or dispose of, or have in his or her possession with intent to sell or dispose of any metal article marked, stamped or branded with the words "sterling," "sterling silver," or "solid silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 290; 1909 c 249 § 428; RRS § 2680.]

9.16.110 Use of words "coin silver," etc. Every person who shall make, sell or offer to sell or dispose of, or have in his or her possession with intent to dispose of any metal article marked, stamped or branded with the words "coin," or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such article and all parts thereof is manufactured, is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 291; 1909 c 249 § 429; RRS § 2681.]

9.16.120 Use of the word "sterling" on mounting. Every person who shall make, sell, offer to sell or dispose of,

or have in his or her possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "sterling," or "sterling silver," unless nine hundred twenty-five one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 292; 1909 c 249 § 430; RRS § 2682.]

9.16.130 Use of the words "coin silver" on mounting.

Every person who shall make, sell, offer to sell or dispose of, or have in his or her possession with intent to sell or dispose of, any article comprised of leather, shell, ivory, celluloid, pearl, glass, porcelain, pottery, steel or wood, to which is applied or attached a metal mounting marked, stamped or branded with the words "coin" or "coin silver," unless nine hundred one-thousandths of the component parts of the metal of which such metal mounting is manufactured is pure silver, shall be guilty of a gross misdemeanor. [2011 c 336 § 293; 1909 c 249 § 431; RRS § 2683.]

9.16.140 Unlawfully marking article made of gold.

Every person who shall make, sell, offer to sell or dispose of, or have in his or her possession with intent to sell or dispose of, any article constructed wholly or in part of gold, or of an alloy of gold, and marked, stamped or branded in such manner as to indicate that the gold or alloy of gold in such article is of a greater degree or carat of fineness, by more than one carat, than the actual carat or fineness of such gold or alloy of gold, shall be guilty of a gross misdemeanor. [2011 c 336 § 294; 1909 c 249 § 432; RRS § 2684.]

Chapter 9.18 RCW BIDDING OFFENSES

Sections

9.18.080 Offender a competent witness.

9.18.080 Offender a competent witness. Every person offending against any of the provisions of law relating to bribery or corruption shall be a competent witness against another so offending and shall not be excused from giving testimony tending to criminate himself or herself. [2011 c 336 § 295; 1909 c 249 § 78; RRS § 2330. Cf. 1907 c 60 §§ 1, 2; RRS §§ 2149, 2150.]

Bribery and corruption: Chapter 9A.68 RCW.

Incriminating testimony not to be used: RCW 10.52.090.

Rights of accused persons: State Constitution Art. 1 § 9.

Chapter 9.38 RCW FALSE REPRESENTATIONS

Sections

9.38.010 False representation concerning credit.

9.38.010 False representation concerning credit. Every person who, with intent thereby to obtain credit or financial rating, shall willfully make any false statement in

writing of his or her assets or liabilities to any person with whom he or she may be either actually or prospectively engaged in any business transaction or to any commercial agency or other person engaged in the business of collecting or disseminating information concerning financial or commercial ratings, shall be guilty of a misdemeanor. [2011 c 336 § 296; 1909 c 249 § 368; RRS § 2620.]

Chapter 9.41 RCW

FIREARMS AND DANGEROUS WEAPONS

Sections

9.41.040 Unlawful possession of firearms—Ownership, possession by certain persons—Restoration of right to possess—Penalties.
9.41.047 Restoration of possession rights.
9.41.060 Exceptions to restrictions on carrying firearms.
9.41.065 Correctional employees—Effect of exemption from firearms restrictions—Liability limited.
9.41.070 Concealed pistol license—Application—Fee—Renewal.
9.41.250 Dangerous weapons—Penalty—Exemption for law enforcement officers.
9.41.300 Weapons prohibited in certain places—Local laws and ordinances—Exceptions—Penalty.

9.41.040 Unlawful possession of firearms—Ownership, possession by certain persons—Restoration of right to possess—Penalties. (1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(iii) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

(iv) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) Under RCW 9.41.047; and/or

(ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit

the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection (4) only at:

(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or

(ii) The superior court in the county in which the petitioner resides.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense. [2011 c 193 § 1; 2009 c 293 § 1; 2005 c 453 § 1; 2003 c 53 § 26; 1997 c 338 § 47; 1996 c 295 § 2. Prior: 1995 c 129 § 16 (Initiative Measure No. 159); 1994 sp.s. c 7 § 402; prior: 1992 c 205 § 118; 1992 c 168 § 2; 1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

Severability—2005 c 453: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 453 § 7.]

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

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

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

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

Additional notes found at www.leg.wa.gov

9.41.047 Restoration of possession rights. (1)(a) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a

firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

(b) The convicting or committing court shall forward within three judicial days after conviction or entry of the commitment order a copy of the person's driver's license or identicard, or comparable information, along with the date of conviction or commitment, to the department of licensing. When a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health treatment, the committing court also shall forward, within three judicial days after entry of the commitment order, a copy of the person's driver's license, or comparable information, along with the date of commitment, to the national instant criminal background check system index, denied persons file, created by the federal Brady hand-gun violence prevention act (P.L. 103-159).

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition must be brought in the superior court that ordered the involuntary commitment or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

(i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The petitioner has successfully managed the condition related to the commitment;

(iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and

(iv) The symptoms related to the commitment are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the department of social and health services, and the national instant criminal background check system index, denied persons file.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9.41.040(4). [2011 c 193 § 2; 2009 c 293 § 2; 2005 c 453 § 2; 1996 c 295 § 3. Prior: 1994 sp.s. c 7 § 404.]

Severability—2005 c 453: See note following RCW 9.41.040.

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

Additional notes found at www.leg.wa.gov

9.41.060 Exceptions to restrictions on carrying firearms. The provisions of RCW 9.41.050 shall not apply to:

(1) Marshals, sheriffs, prison or jail wardens or their deputies, correctional personnel and community corrections officers as long as they are employed as such who have completed government-sponsored law enforcement firearms training and have been subject to a check through the national instant criminal background check system or an equivalent background check within the past five years, or other law enforcement officers of this state or another state. Correctional personnel and community corrections officers seeking the waiver provided for by this section are required to pay for any background check that is needed in order to exercise the waiver;

(2) Members of the armed forces of the United States or of the national guard or organized reserves, when on duty;

(3) Officers or employees of the United States duly authorized to carry a concealed pistol;

(4) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of the person, if possessing, using, or carrying a pistol in the usual or ordinary course of the business;

(5) Regularly enrolled members of any organization duly authorized to purchase or receive pistols from the United States or from this state;

(6) Regularly enrolled members of clubs organized for the purpose of target shooting, when those members are at or are going to or from their places of target practice;

(7) Regularly enrolled members of clubs organized for the purpose of modern and antique firearm collecting, when those members are at or are going to or from their collector's gun shows and exhibits;

(8) Any person engaging in a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area;

(9) Any person while carrying a pistol unloaded and in a closed opaque case or secure wrapper; or

(10) Law enforcement officers retired for service or physical disabilities, except for those law enforcement officers retired because of mental or stress-related disabilities. This subsection applies only to a retired officer who has: (a) Obtained documentation from a law enforcement agency within Washington state from which he or she retired that is signed by the agency's chief law enforcement officer and that states that the retired officer was retired for service or physical disability; and (b) not been convicted or found not guilty

by reason of insanity of a crime making him or her ineligible for a concealed pistol license. [2011 c 221 § 1; 2005 c 453 § 3; 1998 c 253 § 2; 1996 c 295 § 5; 1995 c 392 § 1; 1994 sp.s. c 7 § 406; 1961 c 124 § 5; 1935 c 172 § 6; RRS § 2516-6.]

Severability—2005 c 453: See note following RCW 9.41.040.

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

Additional notes found at www.leg.wa.gov

9.41.065 Correctional employees—Effect of exemption from firearms restrictions—Liability limited. The exemptions from firearms restrictions in RCW 9.41.060 and 9.41.300 for correctional personnel and community corrections officers who complete government-sponsored law enforcement firearms training do not create a duty on the part of the state or local governmental entities with respect to the off-duty conduct of correctional personnel and community corrections officers involving the use or misuse of a firearm.

The state of Washington, local governmental entities, and their officers, employees, and agents are not liable for any civil damages caused by the use or misuse of a firearm by off-duty correctional personnel or community corrections officers based on any act or omission in the provision of government-sponsored firearms training to the correctional personnel or community corrections officers. [2011 c 221 § 3.]

9.41.070 Concealed pistol license—Application—Fee—Renewal. (1) The chief of police of a municipality or the sheriff of a county shall within thirty days after the filing of an application of any person, issue a license to such person to carry a pistol concealed on his or her person within this state for five years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. The issuing authority shall not refuse to accept completed applications for concealed pistol licenses during regular business hours.

The applicant's constitutional right to bear arms shall not be denied, unless:

(a) He or she is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045, or is prohibited from possessing a firearm under federal law;

(b) The applicant's concealed pistol license is in a revoked status;

(c) He or she is under twenty-one years of age;

(d) He or she is subject to a court order or injunction regarding firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590;

(e) He or she is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense;

(f) He or she has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor; or

(g) He or she has been ordered to forfeit a firearm under RCW 9.41.098(1)(e) within one year before filing an application to carry a pistol concealed on his or her person.

No person convicted of a felony may have his or her right to possess firearms restored or his or her privilege to carry a concealed pistol restored, unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or RCW 9.41.040 (3) or (4) applies.

(2)(a) The issuing authority shall conduct a check through the national instant criminal background check system, the Washington state patrol electronic database, the department of social and health services electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm, or is prohibited from possessing a firearm under federal law, and therefore ineligible for a concealed pistol license.

(b) The issuing authority shall deny a permit to anyone who is found to be prohibited from possessing a firearm under federal or state law.

(c) This subsection applies whether the applicant is applying for a new concealed pistol license or to renew a concealed pistol license.

(3) Any person whose firearms rights have been restricted and who has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C. Sec. 921(a)(20)(A) shall have his or her right to acquire, receive, transfer, ship, transport, carry, and possess firearms in accordance with Washington state law restored except as otherwise prohibited by this chapter.

(4) The license application shall bear the full name, residential address, telephone number at the option of the applicant, date and place of birth, race, gender, description, a complete set of fingerprints, and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. A signed application for a concealed pistol license shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for a concealed pistol license to an inquiring court or law enforcement agency.

The application for an original license shall include two complete sets of fingerprints to be forwarded to the Washington state patrol.

The license and application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law.

The application shall contain questions about the applicant's eligibility under RCW 9.41.040 and federal law to possess a pistol, the applicant's place of birth, and whether the

applicant is a United States citizen. If the applicant is not a United States citizen, the applicant must provide the applicant's country of citizenship, United States issued alien number or admission number, and the basis on which the applicant claims to be exempt from federal prohibitions on firearm possession by aliens. The applicant shall not be required to produce a birth certificate or other evidence of citizenship. A person who is not a citizen of the United States shall, if applicable, meet the additional requirements of RCW 9.41.173 and produce proof of compliance with RCW 9.41.173 upon application. The license may be in triplicate or in a form to be prescribed by the department of licensing.

The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing the license.

The department of licensing shall make available to law enforcement and corrections agencies, in an on-line format, all information received under this subsection.

(5) The nonrefundable fee, paid upon application, for the original five-year license shall be thirty-six dollars plus additional charges imposed by the federal bureau of investigation that are passed on to the applicant. No other state or local branch or unit of government may impose any additional charges on the applicant for the issuance of the license.

The fee shall be distributed as follows:

- (a) Fifteen dollars shall be paid to the state general fund;
- (b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed;
- (c) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and
- (d) Three dollars to the firearms range account in the general fund.

(6) The nonrefundable fee for the renewal of such license shall be thirty-two dollars. No other branch or unit of government may impose any additional charges on the applicant for the renewal of the license.

The renewal fee shall be distributed as follows:

- (a) Fifteen dollars shall be paid to the state general fund;
- (b) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and
- (c) Three dollars to the firearms range account in the general fund.

(7) The nonrefundable fee for replacement of lost or damaged licenses is ten dollars to be paid to the issuing authority.

(8) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the issuing authority.

(9) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (6) of this section. The fee shall be distributed as follows:

- (a) Three dollars shall be deposited in the state wildlife account and used exclusively first for the printing and distribution of a pamphlet on the legal limits of the use of firearms, firearms safety, and the preemptive nature of state law, and

subsequently the support of volunteer instructors in the basic firearms safety training program conducted by the department of fish and wildlife. The pamphlet shall be given to each applicant for a license; and

(b) Seven dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(10) Notwithstanding the requirements of subsections (1) through (9) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section. However, a temporary emergency license issued under this subsection shall not exempt the holder of the license from any records check requirement. Temporary emergency licenses shall be easily distinguishable from regular licenses.

(11) A political subdivision of the state shall not modify the requirements of this section or chapter, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(12) A person who knowingly makes a false statement regarding citizenship or identity on an application for a concealed pistol license is guilty of false swearing under RCW 9A.72.040. In addition to any other penalty provided for by law, the concealed pistol license of a person who knowingly makes a false statement shall be revoked, and the person shall be permanently ineligible for a concealed pistol license.

(13) A person may apply for a concealed pistol license:

- (a) To the municipality or to the county in which the applicant resides if the applicant resides in a municipality;
- (b) To the county in which the applicant resides if the applicant resides in an unincorporated area; or
- (c) Anywhere in the state if the applicant is a nonresident.

(14) Any person who, as a member of the armed forces, including the national guard and armed forces reserves, is unable to renew his or her license under subsections (6) and (9) of this section because of the person's assignment, reassignment, or deployment for out-of-state military service may renew his or her license within ninety days after the person returns to this state from out-of-state military service, if the person provides the following to the issuing authority no later than ninety days after the person's date of discharge or assignment, reassignment, or deployment back to this state: (a) A copy of the person's original order designating the specific period of assignment, reassignment, or deployment for out-of-state military service, and (b) if appropriate, a copy of the person's discharge or amended or subsequent assignment, reassignment, or deployment order back to this state. A license so renewed under this subsection (14) shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license under this subsection (14) shall pay only the renewal fee specified in subsection (6) of this section and shall not be required to pay a late renewal penalty in addition to the renewal fee. [2011 c 294 § 1. Prior: 2009 c 216 § 5; 2009 c 59 § 1; 2002 c 302 § 703; 1999 c 222 § 2; 1996 c 295 § 6; 1995 c 351 § 1; prior: 1994 sp.s. c 7 § 407; 1994 c 190 § 2; 1992 c 168 § 1; 1990 c 195 § 6; prior: 1988 c 263 § 10; 1988 c 223 § 1; 1988 c 219 § 1; 1988 c 36 § 1; 1985 c 428 § 3; 1983 c 232 § 3; 1979 c 158 § 1; 1971 ex.s. c 302 § 2; 1961 c 124 § 6; 1935 c 172 § 7; RRS § 2516-7.]

Application—Construction—Short title—Severability—2002 c 302: See RCW 26.26.903, 26.26.911, and 26.26.912.

Finding—Hunter education program: "The legislature finds that the hunter education program offers classes that all new hunters in the state are legally required to complete, but that budget reductions have limited the assistance that may be provided to the volunteers who conduct these classes. A portion of the funds for this program is provided by statute exclusively for printing and distributing the hunter safety pamphlet. While this pamphlet should remain the highest spending priority for these funds, there is a surplus in the account which could assist with other activities by the volunteers conducting the hunter education program." [1999 c 222 § 1.]

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

Additional notes found at www.leg.wa.gov

9.41.250 Dangerous weapons—Penalty—Exemption for law enforcement officers. (1) Every person who:

(a) Manufactures, sells, or disposes of or possesses any instrument or weapon of the kind usually known as slung shot, sand club, or metal knuckles, or spring blade knife, or any knife the blade of which is automatically released by a spring mechanism or other mechanical device, or any knife having a blade which opens, or falls, or is ejected into position by the force of gravity, or by an outward, downward, or centrifugal thrust or movement;

(b) Furtively carries with intent to conceal any dagger, dirk, pistol, or other dangerous weapon; or

(c) Uses any contrivance or device for suppressing the noise of any firearm unless the suppressor is legally registered and possessed in accordance with federal law, is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) Subsection (1)(a) of this section does not apply to:

(a) The possession of a spring blade knife by a law enforcement officer while the officer:

(i) Is on official duty; or

(ii) Is transporting the knife to or from the place where the knife is stored when the officer is not on official duty; or

(b) The storage of a spring blade knife by a law enforcement officer. [2011 c 13 § 1; 2007 c 379 § 1; 1994 sp.s. c 7 § 424; 1959 c 143 § 1; 1957 c 93 § 1; 1909 c 249 § 265; 1886 p 81 § 1; Code 1881 § 929; RRS § 2517.]

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

Additional notes found at www.leg.wa.gov

9.41.300 Weapons prohibited in certain places—Local laws and ordinances—Exceptions—Penalty. (1) It is unlawful for any person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a weapon:

(a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) held for extradition or as a material witness, or (iii) otherwise confined pursuant to an order of a court, except an order under chapter 13.32A or 13.34 RCW. Restricted access areas do not include common areas of egress or ingress open to the general public;

(b) Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas

used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).

For purposes of this subsection (1)(b), "weapon" means any firearm, explosive as defined in RCW 70.74.010, or any weapon of the kind usually known as slung shot, sand club, or metal knuckles, or any knife, dagger, dirk, or other similar weapon that is capable of causing death or bodily injury and is commonly used with the intent to cause death or bodily injury.

In addition, the local legislative authority shall provide either a stationary locked box sufficient in size for pistols and key to a weapon owner for weapon storage, or shall designate an official to receive weapons for safekeeping, during the owner's visit to restricted areas of the building. The locked box or designated official shall be located within the same building used in connection with court proceedings. The local legislative authority shall be liable for any negligence causing damage to or loss of a weapon either placed in a locked box or left with an official during the owner's visit to restricted areas of the building.

The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas;

(c) The restricted access areas of a public mental health facility certified by the department of social and health services for inpatient hospital care and state institutions for the care of the mentally ill, excluding those facilities solely for evaluation and treatment. Restricted access areas do not include common areas of egress and ingress open to the general public;

(d) That portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age; or

(e) The restricted access areas of a commercial service airport designated in the airport security plan approved by the federal transportation security administration, including passenger screening checkpoints at or beyond the point at which a passenger initiates the screening process. These areas do not include airport drives, general parking areas and walkways, and shops and areas of the terminal that are outside the screening checkpoints and that are normally open to unscreened passengers or visitors to the airport. Any restricted access area shall be clearly indicated by prominent signs indicating that firearms and other weapons are prohibited in the area.

(2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

(b) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

(i) Any pistol in the possession of a person licensed under RCW 9.41.070 or exempt from the licensing requirement by RCW 9.41.060; or

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

(3)(a) Cities, towns, and counties may enact ordinances restricting the areas in their respective jurisdictions in which firearms may be sold, but, except as provided in (b) of this subsection, a business selling firearms may not be treated more restrictively than other businesses located within the same zone. An ordinance requiring the cessation of business within a zone shall not have a shorter grandfather period for businesses selling firearms than for any other businesses within the zone.

(b) Cities, towns, and counties may restrict the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds, if the business has a storefront, has hours during which it is open for business, and posts advertisements or signs observable to passersby that firearms are available for sale. A business selling firearms that exists as of the date a restriction is enacted under this subsection (3)(b) shall be grandfathered according to existing law.

(4) Violations of local ordinances adopted under subsection (2) of this section must have the same penalty as provided for by state law.

(5) The perimeter of the premises of any specific location covered by subsection (1) of this section shall be posted at reasonable intervals to alert the public as to the existence of any law restricting the possession of firearms on the premises.

(6) Subsection (1) of this section does not apply to:

(a) A person engaged in military activities sponsored by the federal or state governments, while engaged in official duties;

(b) Law enforcement personnel, except that subsection (1)(b) of this section does apply to a law enforcement officer who is present at a courthouse building as a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any party has alleged the existence of domestic violence as defined in RCW 26.50.010; or

(c) Security personnel while engaged in official duties.

(7) Subsection (1)(a), (b), (c), and (e) of this section does not apply to correctional personnel or community corrections officers, as long as they are employed as such, who have completed government-sponsored law enforcement firearms training, except that subsection (1)(b) of this section does apply to a correctional employee or community corrections officer who is present at a courthouse building as a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any party has alleged the existence of domestic violence as defined in RCW 26.50.010.

(8) Subsection (1)(a) of this section does not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while

on the premises or checks his or her firearm. The person may reclaim the firearms upon leaving but must immediately and directly depart from the place or facility.

(9) Subsection (1)(c) of this section does not apply to any administrator or employee of the facility or to any person who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises.

(10) Subsection (1)(d) of this section does not apply to the proprietor of the premises or his or her employees while engaged in their employment.

(11) Government-sponsored law enforcement firearms training must be training that correctional personnel and community corrections officers receive as part of their job requirement and reference to such training does not constitute a mandate that it be provided by the correctional facility.

(12) Any person violating subsection (1) of this section is guilty of a gross misdemeanor.

(13) "Weapon" as used in this section means any firearm, explosive as defined in RCW 70.74.010, or instrument or weapon listed in RCW 9.41.250. [2011 c 221 § 2; 2008 c 33 § 1. Prior: 2004 c 116 § 1; 2004 c 16 § 1; 1994 sp.s. c 7 § 429; 1993 c 396 § 1; 1985 c 428 § 2.]

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

Additional notes found at www.leg.wa.gov

Chapter 9.44 RCW PETITION MISCONDUCT

Sections

9.44.080 Misconduct in signing a petition.

9.44.080 Misconduct in signing a petition. In a situation not covered by RCW 29A.84.220, 29A.84.230, 29A.84.240, or 29A.84.250, every person who shall willfully sign the name of another person or of a fictitious person, or for any consideration, gratuity or reward shall sign his or her own name to or withdraw his or her name from any referendum or other petition circulated in pursuance of any law of this state or any municipal ordinance; or in signing his or her name to such petition shall willfully subscribe to any false statement concerning his or her age, citizenship, residence or other qualifications to sign the same; or knowing that any such petition contains any such false or wrongful signature or statement, shall file the same, or put the same off with intent that it should be filed, as a true and genuine petition, shall be guilty of a misdemeanor. [2011 c 336 § 297; 1999 c 143 § 4; 1909 c 249 § 337; RRS § 2589.]

Forgery: RCW 9A.60.020.

Initiative and referendum petition forgery: RCW 29A.84.230, 29A.84.250.

Recall petition forgery: RCW 29A.84.240, 29A.84.220.

Chapter 9.45 RCW FRAUDS AND SWINDLES

Sections

9.45.060 Encumbered, leased, or rented personal property—Construction.

9.45.070	Mock auctions.
9.45.080	Fraudulent removal of property.
9.45.090	Knowingly receiving fraudulent conveyance.
9.45.100	Fraud in assignment for benefit of creditors.

9.45.060 Encumbered, leased, or rented personal property—Construction. Every person being in possession thereof, who shall sell, remove, conceal, convert to his or her own use, or destroy or connive at or consent to the sale, removal, conversion, concealment, or destruction of any personal property or any part thereof, upon which a security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease exists, with intent to hinder, delay, or defraud the secured party of such security agreement, or the holder of such mortgage, lien, or conditional sales contract or the lessor under such lease or rentor under such rental agreement, or any assignee of such security agreement, mortgage, lien, conditional sales contract, rental agreement or lease shall be guilty of a gross misdemeanor.

In any prosecution under this section any allegation containing a description of the security agreement, mortgage, lien, conditional sales contract, rental agreement, or lease by reference to the date thereof and names of the parties thereto, shall be sufficiently definite and certain.

The provisions of this section shall be cumulative and nonexclusive and shall not affect any other criminal provision. [2011 c 336 § 298; 1971 c 61 § 1; 1965 ex.s. c 109 § 1; 1909 c 249 § 377; RRS § 2629.]

Destruction or removal of fixtures, etc., from mortgaged real property: RCW 61.12.030.

Larceny, sale of mortgaged property: Chapter 9A.56 RCW.

9.45.070 Mock auctions. Every person who shall obtain any money or property from another or shall obtain the signature of another to any writing the false making of which would be forgery, by color or aid of any false or fraudulent sale of property or pretended sale of property by auction, or by any of the practices known as mock auction, shall be punished by imprisonment in a state correctional facility for not more than five years or in the county jail for up to three hundred sixty-four days, or by a fine of not more than one thousand dollars, or by both fine and imprisonment.

Every person who shall buy or sell or pretend to buy or sell any goods, wares or merchandise, exposed to sale by auction, if an actual sale, purchase and change of ownership therein does not thereupon take place, shall be guilty of a misdemeanor. [2011 c 96 § 6; 1992 c 7 § 10; 1909 c 249 § 378; RRS § 2630.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Auctioneering without license: RCW 36.71.070.

Auctioneers: Chapter 18.11 RCW.

9.45.080 Fraudulent removal of property. Every person who, with intent to defraud a prior or subsequent purchaser thereof, or prevent any of his or her property being made liable for the payment of any of his or her debts, or levied upon by an execution or warrant of attachment, shall remove any of his or her property, or secrete, assign, convey, or otherwise dispose of the same, or with intent to defraud a creditor shall remove, secrete, assign, convey, or otherwise dispose of any of his or her books or accounts, vouchers or

writings in any way relating to his or her business affairs, or destroy, obliterate, alter, or erase any of such books of account, accounts, vouchers, or writing or any entry, memorandum, or minute therein contained, shall be guilty of a gross misdemeanor. [2011 c 336 § 299; 1909 c 249 § 379; RRS § 2631.]

9.45.090 Knowingly receiving fraudulent conveyance. Every person who shall receive any property or conveyance thereof from another, knowing that the same is transferred or delivered to him or her in violation of, or with the intent to violate RCW 9.45.080, shall be guilty of a misdemeanor. [2011 c 336 § 300; 1909 c 249 § 380; RRS § 2632.]

9.45.100 Fraud in assignment for benefit of creditors. Every person who, having made, or being about to make, a general assignment of his or her property to pay his or her debts, shall by color or aid of any false or fraudulent representation, pretense, token, or writing induce any creditor to participate in the benefits of such assignments, or to give any release or discharge of his or her claim or any part thereof, or shall connive at the payment in whole or in part of any false, fraudulent or fictitious claim, shall be guilty of a gross misdemeanor. [2011 c 336 § 301; 1909 c 249 § 381; RRS § 2633.]

Assignment for benefit of creditors: Chapter 7.08 RCW.

Banks and trust companies, preferential transfers: RCW 30.44.110.

Mutual savings banks, transfer of assets due to insolvency: RCW 32.24.080.

Chapter 9.46 RCW GAMBLING—1973 ACT

Sections

9.46.0356	Promotional contests of chance authorized.
9.46.050	Gambling commission—Chair—Quorum—Meetings—Compensation and travel expenses—Bond—Removal.
9.46.130	Inspection and audit of premises, paraphernalia, books, and records—Reports for the commission.
9.46.198	Working in gambling activity without license as violation—Penalty.
9.46.200	Action for money damages due to violations—Interest—Attorneys' fees—Evidence for exoneration.
9.46.250	Gambling property or premises—Common nuisances, abatement—Termination of interests, licenses—Enforcement.
9.46.295	Licenses, scope of authority—Exception.
9.46.410	Use of public assistance electronic benefit cards prohibited—Licensee to report violations—Suspension of license.

9.46.0356 Promotional contests of chance authorized. (1) The legislature authorizes:

(a) A business to conduct a promotional contest of chance as defined in this section, in this state, or partially in this state, whereby the elements of prize and chance are present but in which the element of consideration is not present;

(b) A financial institution, as defined in RCW 30.22.040, to conduct a promotional contest of chance under this section in which: (i) A drawing for an annual prize is held that includes as eligible prize recipients only those persons who deposited funds at the financial institution in a savings account, certificate of deposit, or any other savings program and retained those funds for at least twelve months in the savings account, certificate of deposit, or other savings program; and (ii) drawings for other prizes are held from time to time

that include as eligible prize recipients only those persons who deposited funds at the financial institution in a savings account, certificate of deposit, or other savings program. No such contest may be conducted, either wholly or partially, by means of the internet.

(2) Promotional contests of chance under this section are not gambling as defined in RCW 9.46.0237.

(3) Promotional contests of chance shall be conducted as advertising and promotional undertakings solely for the purpose of advertising or promoting the services, goods, wares, and merchandise of a business.

(4) No person eligible to receive a prize in a promotional contest of chance under subsection (1)(a) of this section may be required to:

(a) Pay any consideration to the promoter or operator of the business in order to participate in the contest; or

(b) Purchase any service, goods, wares, merchandise, or anything of value from the business, however, for other than contests entered through a direct mail solicitation, the promoter or sponsor may give additional entries or chances upon purchase of service, goods, wares, or merchandise if the promoter or sponsor provides an alternate method of entry requiring no consideration.

(5) No person eligible to receive a prize in a promotional contest of chance under subsection (1)(b) of this section may be required to pay any consideration other than the deposit of funds, or purchase any service, goods, wares, merchandise, or anything of value from the financial institution.

(6)(a) As used in this section, "consideration" means anything of pecuniary value required to be paid to the promoter or sponsor in order to participate in a promotional contest. Such things as visiting a business location, placing or answering a telephone call, completing an entry form or customer survey, or furnishing a stamped, self-addressed envelope do not constitute consideration.

(b) Coupons or entry blanks obtained by purchase of a bona fide newspaper or magazine or in a program sold in conjunction with a regularly scheduled sporting event are not consideration.

(7) Unless authorized by the commission, equipment or devices made for use in a gambling activity are prohibited from use in a promotional contest.

(8) This section shall not be construed to permit noncompliance with chapter 19.170 RCW, promotional advertising of prizes, and chapter 19.86 RCW, unfair business practices. [2011 c 303 § 2; 2000 c 228 § 1.]

Findings—Intent—2011 c 303: "The legislature finds that consumer savings is essential, both for individuals seeking to obtain the American dream, and in order to rebuild a strong economy. The legislature further finds that for most of the last two decades, consumers have borrowed more than they have saved, with current United States savings rates under six percent. The legislature intends to encourage financial institutions to develop innovative products that create incentives to encourage consumer savings, particularly savings by low-income consumers." [2011 c 303 § 1.]

9.46.050 Gambling commission—Chair—Quorum—Meetings—Compensation and travel expenses—Bond—Removal. (1) Upon appointment of the initial membership the commission shall meet at a time and place designated by the governor and proceed to organize, electing one of such members as chair of the commission who shall serve until July 1, 1974; thereafter a chair shall be elected annually.

(2) A majority of the members shall constitute a quorum of the commission: PROVIDED, That all actions of the commission relating to the regulation of licensing under this chapter shall require an affirmative vote by three or more members of the commission.

(3) The principal office of the commission shall be at the state capitol, and meetings shall be held at least quarterly and at such other times as may be called by the chair or upon written request to the chair of a majority of the commission.

(4) Members shall be compensated in accordance with RCW 43.03.250 and shall receive reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(5) Before entering upon the duties of his or her office, each of the members of the commission shall enter into a surety bond executed by a surety company authorized to do business in this state, payable to the state of Washington, to be approved by the governor, in the penal sum of fifty thousand dollars, conditioned upon the faithful performance of his or her duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the commission.

(6) Any member of the commission may be removed for inefficiency, malfeasance, or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final. Removal of any member of the commission by the tribunal shall disqualify such member for reappointment. [2011 c 336 § 302; 1984 c 287 § 9; 1975-'76 2nd ex.s. c 34 § 7; 1973 1st ex.s. c 218 § 5.]

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

Additional notes found at www.leg.wa.gov

9.46.130 Inspection and audit of premises, paraphernalia, books, and records—Reports for the commission. The premises and paraphernalia, and all the books and records of any person, association, or organization conducting gambling activities authorized under this chapter and any person, association, or organization receiving profits therefrom or having any interest therein shall be subject to inspection and audit at any reasonable time, with or without notice, upon demand, by the commission or its designee, the attorney general or his or her designee, the chief of the Washington state patrol or his or her designee or the prosecuting attorney, sheriff, or director of public safety or their designees of the county wherein located, or the chief of police or his or her designee of any city or town in which said organization is located, for the purpose of determining compliance or non-compliance with the provisions of this chapter and any rules or regulations or local ordinances adopted pursuant thereto. A reasonable time for the purpose of this section shall be: (1) If the items or records to be inspected or audited are located anywhere upon a premises any portion of which is regularly open to the public or members and guests, then at any time

when the premises are so open, or at which they are usually open; or (2) if the items or records to be inspected or audited are not located upon a premises set out in subsection (1) of this section, then any time between the hours of 8:00 a.m. and 9:00 p.m., Monday through Friday.

The commission shall be provided at such reasonable intervals as the commission shall determine with a report, under oath, detailing all receipts and disbursements in connection with such gambling activities together with such other reasonable information as required in order to determine whether such activities comply with the purposes of this chapter or any local ordinances relating thereto. [2011 c 336 § 303; 1981 c 139 § 10; 1975 1st ex.s. c 166 § 7; 1973 1st ex.s. c 218 § 13.]

Additional notes found at www.leg.wa.gov

9.46.198 Working in gambling activity without license as violation—Penalty. Any person who works as an employee or agent or in a similar capacity for another person in connection with the operation of an activity for which a license is required under this chapter or by commission rule without having obtained the applicable license required by the commission under RCW 9.46.070(17) shall be guilty of a gross misdemeanor and shall, upon conviction, be punished by up to three hundred sixty-four days in the county jail or a fine of not more than five thousand dollars, or both. [2011 c 96 § 7; 1999 c 143 § 7; 1977 ex.s. c 326 § 14.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

9.46.200 Action for money damages due to violations—Interest—Attorneys' fees—Evidence for exoneration. In addition to any other penalty provided for in this chapter, every person, directly or indirectly controlling the operation of any gambling activity authorized by this chapter, including a director, officer, and/or manager of any association, organization, or corporation conducting the same, whether charitable, nonprofit, or profit, shall be liable, jointly and severally, for money damages suffered by any person because of any violation of this chapter, together with interest on any such amount of money damages at six percent per annum from the date of the loss, and reasonable attorneys' fees: PROVIDED, That if any such director, officer, and/or manager did not know any such violation was taking place and had taken all reasonable care to prevent any such violation from taking place, and if such director, officer, and/or manager shall establish by a preponderance of the evidence that he or she did not have such knowledge and that he or she had exercised all reasonable care to prevent the violations he or she shall not be liable hereunder. Any civil action under this section may be considered a class action. [2011 c 336 § 304; 1987 c 4 § 41; 1974 ex.s. c 155 § 10; 1974 ex.s. c 135 § 10; 1973 1st ex.s. c 218 § 20.]

Additional notes found at www.leg.wa.gov

9.46.250 Gambling property or premises—Common nuisances, abatement—Termination of interests, licenses—Enforcement. (1) All gambling premises are common nuisances and shall be subject to abatement by injunction or as otherwise provided by law. The plaintiff in any action brought under this subsection against any gam-

bling premises, need not show special injury and may, in the discretion of the court, be relieved of all requirements as to giving security.

(2) When any property or premise held under a mortgage, contract, or leasehold is determined by a court having jurisdiction to be a gambling premises, all rights and interests of the holder therein shall terminate and the owner shall be entitled to immediate possession at his or her election: PROVIDED, HOWEVER, That this subsection shall not apply to those premises in which activities authorized by this chapter or any act or acts in furtherance thereof are carried on when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto.

(3) When any property or premises for which one or more licenses issued by the commission are in effect, is determined by a court having jurisdiction to be a gambling premise, all such licenses may be voided and no longer in effect, and no license so voided shall be issued or reissued for such property or premises for a period of up to sixty days thereafter. Enforcement of this subsection shall be the duty of all peace officers and all taxing and licensing officials of this state and its political subdivisions and other public agencies. This subsection shall not apply to property or premises in which activities authorized by this chapter, or any act or acts in furtherance thereof, are carried on when conducted in compliance with the provisions of this chapter and in accordance with the rules and regulations adopted pursuant thereto. [2011 c 336 § 305; 1987 c 4 § 45; 1973 1st ex.s. c 218 § 25.]

9.46.295 Licenses, scope of authority—Exception. (1) Any license to engage in any of the gambling activities authorized by this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued throughout the incorporated and unincorporated area of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.

(2)(a) A city or town with a prohibition on house-banked social card game licenses that annexes an area that is within a city, town, or county that permits house-banked social card games may allow a house-banked social card game business that was licensed by the commission as of July 26, 2009, to continue operating if the city or town is authorized to impose a tax under RCW 82.14.415 and can demonstrate that the continuation of the house-banked social card game business will reduce the credit against the state sales and use tax as provided in RCW 82.14.415(7).

(b) A city or town that allowed a house-banked social card game business in an annexed area to continue operating under (a) of this subsection before July 15, 2010, shall allow all social card game businesses in the annexed area that were operating and licensed by the commission as of January 1, 2011, to continue operating.

(c) A city or town that allows a social card game business in an annexed area to continue operating is not required to

allow additional social card game businesses. [2011 c 134 § 1; 2009 c 550 § 2; 1974 ex.s. c 155 § 6; 1974 ex.s. c 135 § 6.]

Additional notes found at www.leg.wa.gov

9.46.410 Use of public assistance electronic benefit cards prohibited—Licensee to report violations—Suspension of license. (1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards for the purpose of participating in any of the activities authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of RCW 74.08.580.

(3) Any licensee authorized under this chapter is required to comply with RCW 74.08.580(2). If the licensee fails to comply with RCW 74.08.580(2), its license shall be immediately suspended until it complies with RCW 74.08.580(2). If the licensee remains otherwise eligible to be licensed, the commission may reinstate the license once the licensee has complied with RCW 74.08.580(2). [2011 1st sp.s. c 42 § 19; 2002 c 252 § 2.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

Chapter 9.47 RCW GAMBLING

Sections

9.47.100 Written statement to be furnished—Presumption.

9.47.100 Written statement to be furnished—Presumption. Every person, whether in his or her own behalf, or as the servant, agent, or employee of another person, within or outside of this state, who shall buy or sell for another, or execute any order for the purchase or sale of any commodities, securities, or property, upon margin or credit, whether for immediate or future delivery, shall, upon written demand therefor, furnish such principal or customer with a written statement containing the names of the persons from whom such property was bought, or to whom it has been sold, as the case may be, the time when, the place where, the amount of, and the price at which the same was either bought or sold; and if such person shall refuse or neglect to furnish such statement within forty-eight hours after such written demand, such refusal shall be prima facie evidence as against him or her that such purchase or sale was made in violation of RCW 9.47.090. [2011 c 336 § 306; 1909 c 249 § 225; RRS § 2477.]

Chapter 9.47A RCW INHALING TOXIC FUMES

Sections

9.47A.040 Sale of certain substances prohibited, when.

9.47A.040 Sale of certain substances prohibited, when. No person may sell, offer to sell, deliver, or give to any other person any container of a substance containing a solvent having the property of releasing toxic vapors or fumes, if he or she has knowledge that the product sold,

offered for sale, delivered, or given will be used for the purpose set forth in RCW 9.47A.020. [2011 c 336 § 307; 1984 c 68 § 4; 1969 ex.s. c 149 § 4.]

Chapter 9.51 RCW JURIES, CRIMES RELATING TO

Sections

9.51.020 Soliciting jury duty.
9.51.040 Grand juror acting after challenge allowed.
9.51.050 Disclosing transaction of grand jury.
9.51.060 Disclosure of deposition returned by grand jury.

9.51.020 Soliciting jury duty. Every person who shall, directly or indirectly, solicit or request any person charged with the duty of preparing any jury list to put his or her name, or the name of any other person, on any such list, shall be guilty of a gross misdemeanor. [2011 c 336 § 308; 1909 c 249 § 76; 1888 p 114 § 1; RRS § 2328.]

9.51.040 Grand juror acting after challenge allowed. Every grand juror who, with knowledge that a challenge interposed against him or her by a defendant has been allowed, shall be present at, or take part, or attempt to take part, in the consideration of the charge against the defendant who interposed such challenge, or the deliberations of the grand jury thereon, shall be guilty of a misdemeanor. [2011 c 336 § 309; 1909 c 249 § 121; RRS § 2373.]

9.51.050 Disclosing transaction of grand jury. Every judge, grand juror, prosecuting attorney, clerk, stenographer, or other officer who, except in the due discharge of his or her official duty, shall disclose the fact that a presentment has been made or indictment found or ordered against any person, before such person shall be in custody; and every grand juror, clerk, or stenographer who, except when lawfully required by a court or officer, shall disclose any evidence adduced before the grand jury, or any proceeding, discussion, or vote of the grand jury or any member thereof, shall be guilty of a misdemeanor. [2011 c 336 § 310; 1909 c 249 § 126; Code 1881 § 991; 1854 p 111 § 56; RRS § 2378.]

9.51.060 Disclosure of deposition returned by grand jury. Every clerk of any court or other officer who shall willfully permit any deposition, or the transcript of any testimony, returned by a grand jury and filed with such clerk or officer, to be inspected by any person except the court, the deputies or assistants of such clerk, and the prosecuting attorney and his or her deputies, until after the arrest of the defendant, shall be guilty of a misdemeanor. [2011 c 336 § 311; 1909 c 249 § 127; RRS § 2379.]

Chapter 9.54 RCW STOLEN PROPERTY RESTORATION

Sections

9.54.130 Restoration of stolen property—Duty of officers.

9.54.130 Restoration of stolen property—Duty of officers. The officer arresting any person charged as principal

pal or accessory in any robbery or larceny shall use reasonable diligence to secure the property alleged to have been stolen, and after seizure shall be answerable therefor while it remains in his or her hands, and shall annex a schedule thereof to his or her return of the warrant.

Whenever the prosecuting attorney shall require such property for use as evidence upon the examination or trial, such officer, upon his or her demand, shall deliver it to him or her and take his or her receipt therefor, after which such prosecuting attorney shall be answerable for the same. [2011 c 336 § 312; 1909 c 249 § 357; RRS § 2609.]

Chapter 9.55 RCW

LEGISLATURE, CRIMES RELATING TO

Sections

9.55.020 Witness refusing to attend legislature or committee or to testify.

9.55.020 Witness refusing to attend legislature or committee or to testify. Every person duly summoned to attend as a witness before either house of the legislature of this state, or any committee thereof authorized to summon witnesses, who shall refuse or neglect, without lawful excuse, to attend pursuant to such summons, or who shall willfully refuse to be sworn or to affirm or to answer any material or proper question or to produce, upon reasonable notice, any material or proper books, papers or documents in his or her possession or under his or her control, shall be guilty of a gross misdemeanor. [2011 c 336 § 313; 1909 c 249 § 86; RRS § 2338.]

Candidate buying liquor for another person on election day: RCW 66.44.265.

Legislative inquiry: Chapter 44.16 RCW.

Chapter 9.61 RCW

MALICIOUS MISCHIEF—INJURY TO PROPERTY

Sections

9.61.190 Carrier or racing pigeons—Injury to.
9.61.200 Carrier or racing pigeons—Removal or alteration of identification.
9.61.240 Telephone harassment—Permitting telephone to be used.

9.61.190 Carrier or racing pigeons—Injury to. It is a class 1 civil infraction for any person, other than the owner thereof or his or her authorized agent, to knowingly shoot, kill, maim, injure, molest, entrap, or detain any Antwerp Messenger or Racing Pigeon, commonly called "carrier or racing pigeons", having the name of its owner stamped upon its wing or tail or bearing upon its leg a band or ring with the name or initials of the owner or an identification or registration number stamped thereon. [2011 c 336 § 314; 1987 c 456 § 25; 1963 c 69 § 1.]

Legislative finding—1987 c 456: See RCW 7.80.005.

Additional notes found at www.leg.wa.gov

9.61.200 Carrier or racing pigeons—Removal or alteration of identification. It is a class 2 civil infraction for any person other than the owner thereof or his or her authorized agent to remove or alter any stamp, leg band, ring, or

[2011 RCW Supp—page 108]

other mark of identification attached to any Antwerp Messenger or Racing Pigeon. [2011 c 336 § 315; 1987 c 456 § 26; 1963 c 69 § 2.]

Legislative finding—1987 c 456: See RCW 7.80.005.

Additional notes found at www.leg.wa.gov

9.61.240 Telephone harassment—Permitting telephone to be used. Any person who knowingly permits any telephone under his or her control to be used for any purpose prohibited by RCW 9.61.230 shall be guilty of a misdemeanor. [2011 c 336 § 316; 1967 c 16 § 2.]

Chapter 9.62 RCW

MALICIOUS PROSECUTION—ABUSE OF PROCESS

Sections

9.62.020 Instituting suit in name of another.

9.62.020 Instituting suit in name of another. Every person who shall institute or prosecute any action or other proceeding in the name of another, without his or her consent and contrary to law, shall be guilty of a gross misdemeanor. [2011 c 336 § 317; 1909 c 249 § 124; RRS § 2376.]

Chapter 9.68 RCW

OBSCENITY AND PORNOGRAPHY

Sections

9.68.060 "Erotic material"—Determination by court—Labeling—Penalties.
9.68.070 Prosecution for violation of RCW 9.68.060—Defense.
9.68.080 Unlawful acts.
9.68.090 Civil liability of wholesaler or wholesaler-distributor.
9.68.110 Motion picture operator or projectionist exempt, when.
9.68.130 "Sexually explicit material"—Defined—Unlawful display.

9.68.060 "Erotic material"—Determination by court—Labeling—Penalties. (1) When it appears that material which may be deemed erotic is being sold, distributed, or exhibited in this state, the prosecuting attorney of the county in which the sale, distribution, or exhibition is taking place may apply to the superior court for a hearing to determine the character of the material with respect to whether it is erotic material.

(2) Notice of the hearing shall immediately be served upon the dealer, distributor, or exhibitor selling or otherwise distributing or exhibiting the alleged erotic material. The superior court shall hold a hearing not later than five days from the service of notice to determine whether the subject matter is erotic material within the meaning of RCW 9.68.050.

(3) If the superior court rules that the subject material is erotic material, then, following such adjudication:

(a) If the subject material is written or printed, or is a sound recording, the court shall issue an order requiring that an "adults only" label be placed on the publication or sound recording, if such publication or sound recording is going to continue to be distributed. Whenever the superior court orders a publication or sound recording to have an "adults only" label placed thereon, such label shall be impressed on the front cover of all copies of such erotic publication or

sound recording sold or otherwise distributed in the state of Washington. Such labels shall be in forty-eight point bold face type located in a conspicuous place on the front cover of the publication or sound recording. All dealers and distributors are hereby prohibited from displaying erotic publications or sound recordings in their store windows, on outside newsstands on public thoroughfares, or in any other manner so as to make an erotic publication or the contents of an erotic sound recording readily accessible to minors.

(b) If the subject material is a motion picture, the court shall issue an order requiring that such motion picture shall be labeled "adults only". The exhibitor shall prominently display a sign saying "adults only" at the place of exhibition, and any advertising of the motion picture shall contain a statement that it is for adults only. Such exhibitor shall also display a sign at the place where admission tickets are sold stating that it is unlawful for minors to misrepresent their age.

(4) Failure to comply with a court order issued under the provisions of this section shall subject the dealer, distributor, or exhibitor to contempt proceedings.

(5) Any person who, after the court determines material to be erotic, sells, distributes, or exhibits the erotic material to a minor shall be guilty of violating RCW 9.68.050 through 9.68.120, such violation to carry the following penalties:

(a) For the first offense a misdemeanor and upon conviction shall be fined not more than five hundred dollars, or imprisoned in the county jail not more than six months;

(b) For the second offense a gross misdemeanor and upon conviction shall be fined not more than one thousand dollars, or imprisoned for up to three hundred sixty-four days;

(c) For all subsequent offenses a class B felony and upon conviction shall be fined not more than five thousand dollars, or imprisoned not less than one year. [2011 c 96 § 8; 2003 c 53 § 41; 1992 c 5 § 2; 1969 ex.s. c 256 § 14.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Additional notes found at www.leg.wa.gov

9.68.070 Prosecution for violation of RCW 9.68.060—Defense. In any prosecution for violation of RCW 9.68.060, it shall be a defense that:

(1) If the violation pertains to a motion picture or sound recording, the minor was accompanied by a parent, parent's spouse, or guardian; or

(2) Such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or an apparently official document purporting to establish such minor was over the age of eighteen years; or

(3) Such minor was accompanied by a person who represented himself or herself to be a parent, or the spouse of a parent, or a guardian of such minor, and the defendant in good faith relied upon such representation. [2011 c 336 § 318; 1992 c 5 § 4; 1969 ex.s. c 256 § 15.]

Additional notes found at www.leg.wa.gov

9.68.080 Unlawful acts. (1) It shall be unlawful for any minor to misrepresent his or her true age or his or her true status as the child, stepchild, or ward of a person accompanying

him or her, for the purpose of purchasing or obtaining access to any material described in RCW 9.68.050.

(2) It shall be unlawful for any person accompanying such minor to misrepresent his or her true status as parent, spouse of a parent, or guardian of any minor for the purpose of enabling such minor to purchase or obtain access to material described in RCW 9.68.050. [2011 c 336 § 319; 1969 ex.s. c 256 § 16.]

Additional notes found at www.leg.wa.gov

9.68.090 Civil liability of wholesaler or wholesaler-distributor. No retailer, wholesaler, or exhibitor is to be deprived of service from a wholesaler or wholesaler-distributor of books, magazines, motion pictures, sound recordings, or other materials or subjected to loss of his or her franchise or right to deal or exhibit as a result of his or her attempts to comply with this statute. Any publisher, distributor, or other person, or combination of such persons, which withdraws or attempts to withdraw a franchise or other right to sell at retail, wholesale or exhibit materials on account of the retailer's, wholesaler's, or exhibitor's attempts to comply with RCW 9.68.050 through 9.68.120 shall incur civil liability to such retailer, wholesaler, or exhibitor for threefold the actual damages resulting from such withdrawal or attempted withdrawal. [2011 c 336 § 320; 1992 c 5 § 3; 1969 ex.s. c 256 § 17.]

Additional notes found at www.leg.wa.gov

9.68.110 Motion picture operator or projectionist exempt, when. The provisions of RCW 9.68.050 through 9.68.120 shall not apply to acts done in the scope of his or her employment by a motion picture operator or projectionist employed by the owner or manager of a theatre or other place for the showing of motion pictures, unless the motion picture operator or projectionist has a financial interest in such theatre or place wherein he or she is so employed or unless he or she caused to be performed or exhibited such performance or motion picture without the knowledge and consent of the manager or owner of the theatre or other place of showing. [2011 c 336 § 321; 1969 ex.s. c 256 § 19.]

Additional notes found at www.leg.wa.gov

9.68.130 "Sexually explicit material"—Defined—Unlawful display. (1) A person is guilty of unlawful display of sexually explicit material if he or she knowingly exhibits such material on a viewing screen so that the sexually explicit material is easily visible from a public thoroughfare, park or playground or from one or more family dwelling units.

(2) "Sexually explicit material" as that term is used in this section means any pictorial material displaying direct physical stimulation of unclothed genitals, masturbation, sodomy (i.e. bestiality or oral or anal intercourse), flagellation or torture in the context of a sexual relationship, or emphasizing the depiction of adult human genitals: PROVIDED HOWEVER, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition.

(3) Any person who violates subsection (1) of this section shall be guilty of a misdemeanor. [2011 c 336 § 322; 1975 1st ex.s. c 156 § 1.]

Chapter 9.68A RCW

SEXUAL EXPLOITATION OF CHILDREN

Sections

9.68A.110 Certain defenses barred, permitted.

9.68A.110 Certain defenses barred, permitted. (1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of RCW 9.68A.090 or 9.68A.100 through 9.68A.102, except for the purpose of facilitating an investigation where the minor is also the alleged victim and the:

(a) Investigation is authorized pursuant to RCW 9.73.230(1)(b)(ii) or 9.73.210(1)(b); or

(b) Minor's aid in the investigation involves only telephone or electronic communication with the defendant.

(2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.100, 9.68A.101, or 9.68A.102, it is not a defense that the defendant did not know the alleged victim's age. It is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(4) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, it shall be an affirmative defense that the defendant was a law enforcement officer or a person specifically authorized, in writing, to assist a law enforcement officer and acting at the direction of a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW. Nothing in chapter 227, Laws of 2010 is intended to in any way affect or diminish the immunity afforded an electronic communication service provider, remote computing service provider, or domain name registrar acting in the performance of its reporting or preservation responsibilities under 18 U.S.C. Secs. 2258a, 2258b, or 2258c.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.075, the state is not required to establish the identity of the alleged victim.

(6) In a prosecution under RCW 9.68A.070 or 9.68A.075, it shall be an affirmative defense that:

(a) The defendant was employed at or conducting research in partnership or in cooperation with any institution

of higher education as defined in RCW 28B.07.020 or 28B.10.016, and:

(i) He or she was engaged in a research activity;

(ii) The research activity was specifically approved prior to the possession or viewing activity being conducted in writing by a person, or other such entity vested with the authority to grant such approval by the institution of higher education; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the authorized research; or

(b) The defendant was an employee of the Washington state legislature engaged in research at the request of a member of the legislature and:

(i) The request for research is made prior to the possession or viewing activity being conducted in writing by a member of the legislature;

(ii) The research is directly related to a legislative activity; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the requested research and legislative activity.

(7) Nothing in this section authorizes otherwise unlawful viewing or possession of visual or printed matter depicting a minor engaged in sexually explicit conduct. [2011 c 241 § 4. Prior: 2010 c 289 § 17; 2010 c 227 § 8; 2007 c 368 § 3; 1992 c 178 § 1; 1989 c 32 § 9; 1986 c 319 § 3; 1984 c 262 § 10.]

Findings—Effective date—2011 c 241: See notes following RCW 9.73.230.

Additional notes found at www.leg.wa.gov

Chapter 9.73 RCW

PRIVACY, VIOLATING RIGHT OF

Sections

- 9.73.010 Divulging telegram.
- 9.73.060 Violating right of privacy—Civil action—Liability for damages.
- 9.73.090 Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080—Standards—Court authorizations—Admissibility.
- 9.73.130 Recording private communications—Authorization—Application for, contents.
- 9.73.140 Recording private communications—Authorization of or application for—Inventory, contents, service—Availability of recording, applications, and orders.
- 9.73.210 Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor—Authorization—Monthly report—Admissibility—Destruction of information.
- 9.73.230 Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor—Conditions—Written reports required—Judicial review—Notice—Admissibility—Penalties.

9.73.010 Divulging telegram. Every person who shall wrongfully obtain or attempt to obtain, any knowledge of a telegraphic message, by connivance with the clerk, operator, messenger, or other employee of a telegraph company, and every clerk, operator, messenger, or other employee of such company who shall willfully divulge to any but the person for whom it was intended, any telegraphic message or dispatch intrusted to him or her for transmission or delivery, or the nature or contents thereof, or shall willfully refuse, neglect, or delay duly to transmit or deliver the same, shall be guilty

of a misdemeanor. [2011 c 336 § 323; 1909 c 249 § 410; Code 1881 § 2342; RRS § 2662.]

Intercepting, delaying telegram: RCW 9A.48.070, 9A.48.080.

9.73.060 Violating right of privacy—Civil action—Liability for damages. Any person who, directly or by means of a detective agency or any other agent, violates the provisions of this chapter shall be subject to legal action for damages, to be brought by any other person claiming that a violation of this statute has injured his or her business, his or her person, or his or her reputation. A person so injured shall be entitled to actual damages, including mental pain and suffering endured by him or her on account of violation of the provisions of this chapter, or liquidated damages computed at the rate of one hundred dollars a day for each day of violation, not to exceed one thousand dollars, and a reasonable attorney's fee and other costs of litigation. [2011 c 336 § 324; 1977 ex.s. c 363 § 2; 1967 ex.s. c 93 § 4.]

Additional notes found at www.leg.wa.gov

9.73.090 Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080—Standards—Court authorizations—Admissibility. (1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police, fire, emergency medical service, emergency communication center, and poison center personnel in the following instances:

(a) Recording incoming telephone calls to police and fire stations, licensed emergency medical service providers, emergency communication centers, and poison centers;

(b) Video and/or sound recordings may be made of arrested persons by police officers responsible for making arrests or holding persons in custody before their first appearance in court. Such video and/or sound recordings shall conform strictly to the following:

(i) The arrested person shall be informed that such recording is being made and the statement so informing him or her shall be included in the recording;

(ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;

(iii) At the commencement of the recording the arrested person shall be fully informed of his or her constitutional rights, and such statements informing him or her shall be included in the recording;

(iv) The recordings shall only be used for valid police or court activities;

(c) Sound recordings that correspond to video images recorded by video cameras mounted in law enforcement vehicles. All law enforcement officers wearing a sound recording device that makes recordings corresponding to videos recorded by video cameras mounted in law enforcement vehicles must be in uniform. A sound recording device that makes a recording pursuant to this subsection (1)(c) must be operated simultaneously with the video camera when the operating system has been activated for an event. No sound recording device may be intentionally turned off by the law enforcement officer during the recording of an event. Once the event has been captured, the officer may turn off the audio recording and place the system back into "pre-event" mode.

No sound or video recording made under this subsection (1)(c) may be duplicated and made available to the public by a law enforcement agency subject to this section until final disposition of any criminal or civil litigation which arises from the event or events which were recorded. Such sound recordings shall not be divulged or used by any law enforcement agency for any commercial purpose.

A law enforcement officer shall inform any person being recorded by sound under this subsection (1)(c) that a sound recording is being made and the statement so informing the person shall be included in the sound recording, except that the law enforcement officer is not required to inform the person being recorded if the person is being recorded under exigent circumstances. A law enforcement officer is not required to inform a person being recorded by video under this subsection (1)(c) that the person is being recorded by video.

(2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official duties to intercept, record, or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: PROVIDED, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter.

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

All recordings of communications or conversations made pursuant to this subsection shall be retained for as long as any crime may be charged based on the events or communications or conversations recorded.

(3) Communications or conversations authorized to be intercepted, recorded, or disclosed by this section shall not be inadmissible under RCW 9.73.050.

(4) Authorizations issued under subsection (2) of this section shall be effective for not more than seven days, after which period the issuing authority may renew or continue the authorization for additional periods not to exceed seven days.

(5) If the judge or magistrate determines that there is probable cause to believe that the communication or conversation concerns the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW, the judge or magistrate may authorize the interception, transmis-

sion, recording, or disclosure of communications or conversations under subsection (2) of this section even though the true name of the nonconsenting party, or the particular time and place for the interception, transmission, recording, or disclosure, is not known at the time of the request, if the authorization describes the nonconsenting party and subject matter of the communication or conversation with reasonable certainty under the circumstances. Any such communication or conversation may be intercepted, transmitted, recorded, or disclosed as authorized notwithstanding a change in the time or location of the communication or conversation after the authorization has been obtained or the presence of or participation in the communication or conversation by any additional party not named in the authorization.

Authorizations issued under this subsection shall be effective for not more than fourteen days, after which period the issuing authority may renew or continue the authorization for an additional period not to exceed fourteen days. [2011 c 336 § 325; 2006 c 38 § 1; 2000 c 195 § 2; 1989 c 271 § 205; 1986 c 38 § 2; 1977 ex.s. c 363 § 3; 1970 ex.s. c 48 § 1.]

Intent—2000 c 195: "The legislature intends, by the enactment of this act, to provide a very limited exception to the restrictions on disclosure of intercepted communications." [2000 c 195 § 1.]

Additional notes found at www.leg.wa.gov

9.73.130 Recording private communications—Authorization—Application for, contents. Each application for an authorization to record communications or conversations pursuant to RCW 9.73.090 as now or hereafter amended shall be made in writing upon oath or affirmation and shall state:

- (1) The authority of the applicant to make such application;
- (2) The identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to record a communication or conversation is sought and the identity of whoever authorized the application;
- (3) A particular statement of the facts relied upon by the applicant to justify his or her belief that an authorization should be issued, including:
 - (a) The identity of the particular person, if known, committing the offense and whose communications or conversations are to be recorded;
 - (b) The details as to the particular offense that has been, is being, or is about to be committed;
 - (c) The particular type of communication or conversation to be recorded and a showing that there is probable cause to believe such communication will be communicated on the wire communication facility involved or at the particular place where the oral communication is to be recorded;
 - (d) The character and location of the particular wire communication facilities involved or the particular place where the oral communication is to be recorded;
 - (e) A statement of the period of time for which the recording is required to be maintained, if the character of the investigation is such that the authorization for recording should not automatically terminate when the described type of communication or conversation has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(f) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

(4) Where the application is for the renewal or extension of an authorization, a particular statement of facts showing the results thus far obtained from the recording, or a reasonable explanation of the failure to obtain such results;

(5) A complete statement of the facts concerning all previous applications, known to the individual authorizing and to the individual making the application, made to any court for authorization to record a wire or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each application; and

(6) Such additional testimony or documentary evidence in support of the application as the judge may require. [2011 c 336 § 326; 1977 ex.s. c 363 § 6.]

9.73.140 Recording private communications—Authorization of or application for—Inventory, contents, service—Availability of recording, applications, and orders. Within a reasonable time but not later than thirty days after the termination of the period of the authorization or of extensions or renewals thereof, or the date of the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended, the issuing authority shall cause to be served on the person named in the authorization or application for an authorization, and such other parties to the recorded communications as the judge may in his or her discretion determine to be in the interest of justice, an inventory which shall include:

- (1) Notice of the entry of the authorization or the application for an authorization which has been denied under RCW 9.73.090 as now or hereafter amended;
- (2) The date of the entry of the authorization or the denial of an authorization applied for under RCW 9.73.090 as now or hereafter amended;
- (3) The period of authorized or disapproved recording; and
- (4) The fact that during the period wire or oral communications were or were not recorded.

The issuing authority, upon the filing of a motion, may in its discretion make available to such person or his or her attorney for inspection such portions of the recorded communications, applications and orders as the court determines to be in the interest of justice. On an ex parte showing of good cause to the court the serving of the inventory required by this section may be postponed or dispensed with. [2011 c 336 § 327; 1977 ex.s. c 363 § 7.]

9.73.210 Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor—Authorization—Monthly report—Admissibility—Destruction of information. (1) If a police commander or officer above the rank of first line supervisor has reasonable suspicion that the safety of the consenting party is in danger, law enforcement personnel may, for the sole purpose of protecting the safety of the

consenting party, intercept, transmit, or record a private conversation or communication concerning:

(a) The unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; or

(b) Person(s) engaging in the commercial sexual abuse of a minor under RCW 9.68A.100, or promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102.

(2) Before any interception, transmission, or recording of a private conversation or communication pursuant to this section, the police commander or officer making the determination required by subsection (1) of this section shall complete a written authorization which shall include (a) the date and time the authorization is given; (b) the persons, including the consenting party, expected to participate in the conversation or communication, to the extent known; (c) the expected date, location, and approximate time of the conversation or communication; and (d) the reasons for believing the consenting party's safety will be in danger.

(3) A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations made under this section, the date and time of each authorization, and whether an interception, transmission, or recording was made with respect to each authorization.

(4) Any information obtained pursuant to this section is inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except:

(a) With the permission of the person whose communication or conversation was intercepted, transmitted, or recorded without his or her knowledge;

(b) In a civil action for personal injury or wrongful death arising out of the same incident, where the cause of action is based upon an act of physical violence against the consenting party; or

(c) In a criminal prosecution, arising out of the same incident for a serious violent offense as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense.

(5) Nothing in this section bars the admission of testimony of a participant in the communication or conversation unaided by information obtained pursuant to this section.

(6) The authorizing agency shall immediately destroy any written, transcribed, or recorded information obtained from an interception, transmission, or recording authorized under this section unless the agency determines there has been a personal injury or death or a serious violent offense which may give rise to a civil action or criminal prosecution in which the information may be admissible under subsection (4)(b) or (c) of this section.

(7) Nothing in this section authorizes the interception, recording, or transmission of a telephonic communication or conversation. [2011 c 241 § 3; 1989 c 271 § 202.]

Findings—Effective date—2011 c 241: See notes following RCW 9.73.230.

Additional notes found at www.leg.wa.gov

9.73.230 Intercepting, transmitting, or recording conversations concerning controlled substances or commercial sexual abuse of a minor—Conditions—Written reports required—Judicial review—Notice—Admissibility—Penalties. (1) As part of a bona fide criminal investigation, the chief law enforcement officer of a law enforcement agency or his or her designee above the rank of first line supervisor may authorize the interception, transmission, or recording of a conversation or communication by officers under the following circumstances:

(a) At least one party to the conversation or communication has consented to the interception, transmission, or recording;

(b) Probable cause exists to believe that the conversation or communication involves:

(i) The unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW; or

(ii) A party engaging in the commercial sexual abuse of a minor under RCW 9.68A.100, or promoting commercial sexual abuse of a minor under RCW 9.68A.101, or promoting travel for commercial sexual abuse of a minor under RCW 9.68A.102; and

(c) A written report has been completed as required by subsection (2) of this section.

(2) The agency's chief officer or designee authorizing an interception, transmission, or recording under subsection (1) of this section, shall prepare and sign a written report at the time of authorization indicating:

(a) The circumstances that meet the requirements of subsection (1) of this section;

(b) The names of the authorizing and consenting parties, except that in those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged;

(c) The names of the officers authorized to intercept, transmit, and record the conversation or communication;

(d) The identity of the particular person or persons, if known, who may have committed or may commit the offense;

(e) The details of the particular offense or offenses that may have been or may be committed and the expected date, location, and approximate time of the conversation or communication; and

(f) Whether there was an attempt to obtain authorization pursuant to RCW 9.73.090(2) and, if there was such an attempt, the outcome of the attempt.

(3) An authorization under this section is valid in all jurisdictions within Washington state and for the interception of communications from additional persons if the persons are brought into the conversation or transaction by the nonconsenting party or if the nonconsenting party or such additional persons cause or invite the consenting party to enter another jurisdiction.

(4) The recording of any conversation or communication under this section shall be done in such a manner that protects the recording from editing or other alterations.

(5) An authorization made under this section is valid for no more than twenty-four hours from the time it is signed by

the authorizing officer, and each authorization shall independently meet all of the requirements of this section. The authorizing officer shall sign the written report required under subsection (2) of this section, certifying the exact date and time of his or her signature. An authorization under this section may be extended not more than twice for an additional consecutive twenty-four hour period based upon the same probable cause regarding the same suspected transaction. Each such extension shall be signed by the authorizing officer.

(6) Within fifteen days after the signing of an authorization that results in any interception, transmission, or recording of a conversation or communication pursuant to this section, the law enforcement agency which made the interception, transmission, or recording shall submit a report including the original authorization under subsection (2) of this section to a judge of a court having jurisdiction which report shall identify (a) the persons, including the consenting party, who participated in the conversation, and (b) the date, location, and approximate time of the conversation.

In those cases where the consenting party is a confidential informant, the name of the confidential informant need not be divulged.

A monthly report shall be filed by the law enforcement agency with the administrator for the courts indicating the number of authorizations granted, the date and time of each authorization, interceptions made, arrests resulting from an interception, and subsequent invalidations.

(7)(a) Within two judicial days of receipt of a report under subsection (6) of this section, the court shall make an ex parte review of the authorization and shall make a determination whether the requirements of subsection (1) of this section were met. Evidence obtained as a result of the interception, transmission, or recording need not be submitted to the court. If the court determines that any of the requirements of subsection (1) of this section were not met, the court shall order that any recording and any copies or transcriptions of the conversation or communication be destroyed. Destruction of recordings, copies, or transcriptions shall be stayed pending any appeal of a finding that the requirements of subsection (1) of this section were not met.

(b) Absent a continuation under (c) of this subsection, six months following a determination under (a) of this subsection that probable cause did not exist, the court shall cause a notice to be mailed to the last known address of any nonconsenting party to the conversation or communication that was the subject of the authorization. The notice shall indicate the date, time, and place of any interception, transmission, or recording made pursuant to the authorization. The notice shall also identify the agency that sought the authorization and shall indicate that a review under (a) of this subsection resulted in a determination that the authorization was made in violation of this section provided that, if the confidential informant was a minor at the time of the recording or an alleged victim of commercial child sexual abuse under RCW 9.68A.100 through 9.68A.102 or 9[A].40.100, no such notice shall be given.

(c) An authorizing agency may obtain six-month extensions to the notice requirement of (b) of this subsection in cases of active, ongoing criminal investigations that might be jeopardized by sending the notice.

(8) In any subsequent judicial proceeding, evidence obtained through the interception or recording of a conversation or communication pursuant to this section shall be admissible only if:

(a) The court finds that the requirements of subsection (1) of this section were met and the evidence is used in prosecuting an offense listed in subsection (1)(b) of this section; or

(b) The evidence is admitted with the permission of the person whose communication or conversation was intercepted, transmitted, or recorded; or

(c) The evidence is admitted in a prosecution for a "serious violent offense" as defined in RCW 9.94A.030 in which a party who consented to the interception, transmission, or recording was a victim of the offense; or

(d) The evidence is admitted in a civil suit for personal injury or wrongful death arising out of the same incident, in which a party who consented to the interception, transmission, or recording was a victim of a serious violent offense as defined in RCW 9.94A.030.

Nothing in this subsection bars the admission of testimony of a party or eyewitness to the intercepted, transmitted, or recorded conversation or communication when that testimony is unaided by information obtained solely by violation of RCW 9.73.030.

(9) Any determination of invalidity of an authorization under this section shall be reported by the court to the administrative office of the courts.

(10) Any person who intentionally intercepts, transmits, or records or who intentionally authorizes the interception, transmission, or recording of a conversation or communication in violation of this section, is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(11) An authorizing agency is liable for twenty-five thousand dollars in exemplary damages, in addition to any other damages authorized by this chapter or by other law, to a person whose conversation or communication was intercepted, transmitted, or recorded pursuant to an authorization under this section if:

(a) In a review under subsection (7) of this section, or in a suppression of evidence proceeding, it has been determined that the authorization was made without the probable cause required by subsection (1)(b) of this section; and

(b) The authorization was also made without a reasonable suspicion that the conversation or communication would involve the unlawful acts identified in subsection (1)(b) of this section. [2011 c 241 § 2; 2005 c 282 § 17; 1989 c 271 § 204.]

Findings—2011 c 241: "The legislature finds increasing incidents of commercial sexual exploitation of children in our state, and further protection of victims require giving law enforcement agencies the tool to have a unified victim-centered police investigation approach to further protect victims by ensuring their safety by prosecuting traffickers. The one-party consent provision permitted for drug trafficking investigation passed in the comprehensive bill to facilitate police investigation and prosecution of drug trafficking crimes is a helpful tool to this end. The legislature also finds that exceptions should be allowed for minors employed for investigation when the minor is a victim and involves only electronic communication with the defendant." [2011 c 241 § 1.]

Effective date—2011 c 241: "This act takes effect August 1, 2011." [2011 c 241 § 5.]

Additional notes found at www.leg.wa.gov

Chapter 9.81 RCW
SUBVERSIVE ACTIVITIES

Sections

9.81.090 Public employees—Discharge of subversive persons—Procedure—Hearing—Appeal.

9.81.090 Public employees—Discharge of subversive persons—Procedure—Hearing—Appeal. Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this chapter, shall be cause for discharge from any appointive office or other position of profit or trust in the government of or in the administration of the business of this state, or of any county, municipality or other political subdivision of this state, or any agency thereof. The attorney general and the personnel director, and the civil service commission of any county, city, or other political subdivision of this state, shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this chapter, shall have the right of reasonable notice, date, time, and place of hearing, opportunity to be heard by himself or herself and witnesses on his or her behalf, to be represented by counsel, to be confronted by witnesses against him or her, the right to cross-examination, and such other rights which are in accordance with the procedures prescribed by law for the discharge of such person for other reasons. Every person and every board, commission, council, department, or other agency of the state of Washington or any political subdivision thereof having responsibility for the appointment, employment, or supervision of public employees not covered by the classified service in this section referred to, shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this chapter, after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this chapter, shall promptly report to the special assistant attorney general in charge of subversive activities the fact of and the circumstances surrounding such discharge. Any person discharged under the provisions of this chapter shall have the right within thirty days thereafter to appeal to the superior court of the county wherein said person may reside or wherein he or she may have been employed for determination by said court as to whether or not the discharge appealed from was justified under the provisions of this chapter. The court shall regularly hear and determine such appeals and the decision of the superior court may be appealed to the supreme court or the court of appeals of the state of Washington as in civil cases. Any person appealing to the superior court may be entitled to trial by jury if he or she so elects. [2011 c 336 § 328; 1971 c 81 § 44; 1951 c 254 § 15.]

Chapter 9.82 RCW
TREASON

Sections

9.82.030 Misprision of treason.

9.82.030 Misprision of treason. Every person having knowledge of the commission of treason, who conceals the

same, and does not, as soon as may be, disclose such treason to the governor or a justice of the supreme court or a judge of either the court of appeals or the superior court, shall be guilty of misprision of treason and punished by a fine of not more than one thousand dollars, or by imprisonment in a state correctional facility for not more than five years or in a county jail for up to three hundred sixty-four days. [2011 c 96 § 9; 1992 c 7 § 16; 1971 c 81 § 45; 1909 c 249 § 67; RRS § 2319.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 9.91 RCW
MISCELLANEOUS CRIMES

Sections

9.91.010 Denial of civil rights—Terms defined.

9.91.010 Denial of civil rights—Terms defined. Terms used in this section shall have the following definitions:

(1)(a) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage, or amusement.

(b) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his or her agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed, or color.

(c) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, or color, to be treated as not welcome, accepted, desired, or solicited.

(d) "Any place of public resort, accommodation, assemblage, or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation, or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and termi-

nals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in *loco parentis* to direct the education and upbringing of a child under his or her control is hereby affirmed.

(2) Every person who denies to any other person because of race, creed, or color, the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, shall be guilty of a misdemeanor. [2011 c 336 § 329; 1953 c 87 § 1; 1909 c 249 § 434; RRS § 2686.]

Application forms, licenses—Mention of race or religion prohibited—Penalty: RCW 43.01.100.

Interference with board against discrimination: RCW 49.60.310.

Chapter 9.92 RCW PUNISHMENT

Sections

9.92.020	Punishment of gross misdemeanor when not fixed by statute.
9.92.060	Suspending sentences.
9.92.062	Suspended sentence—Termination date—Application.
9.92.080	Sentence on two or more convictions or counts.
9.92.110	Convicts protected—Forfeitures abolished.
9.92.120	Conviction of public officer forfeits trust.

9.92.020 Punishment of gross misdemeanor when not fixed by statute. Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine. [2011 c 96 § 10; 1982 1st ex.s. c 47 § 6; 1909 c 249 § 15; RRS § 2267.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Additional notes found at www.leg.wa.gov

9.92.060 Suspending sentences. (1) Whenever any person is convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, rape of a child, or rape, the superior court may, in its discretion, at the time of imposing sentence upon such person, direct that such

sentence be stayed and suspended until otherwise ordered by the superior court, and, upon such terms as the superior court may determine, that the sentenced person be placed under the charge of:

(a) A community corrections officer employed by the department of corrections, if the person is subject to supervision under RCW 9.94A.501 or 9.94A.5011; or

(b) A probation officer employed or contracted for by the county, if the county has elected to assume responsibility for the supervision of superior court misdemeanor probationers.

(2) As a condition to suspension of sentence, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. In addition, the superior court may require the convicted person to make such monetary payments, on such terms as the superior court deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay any fine imposed and not suspended and the court or other costs incurred in the prosecution of the case, including reimbursement of the state for costs of extradition if return to this state by extradition was required; and (d) to contribute to a county or interlocal drug fund.

(3) As a condition of the suspended sentence, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(4) If restitution to the victim has been ordered under subsection (2)(b) of this section and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made as ordered. If the superior court has ordered supervision and restitution has not been made, the officer shall inform the prosecutor of that violation of the terms of the suspended sentence not less than three months prior to the termination of the suspended sentence. [2011 1st sp.s. c 40 § 5; 2005 c 362 § 2; 1996 c 298 § 5; 1995 1st sp.s. c 19 § 30; 1987 c 202 § 142; 1982 1st ex.s. c 47 § 8; 1982 1st ex.s. c 8 § 4; 1979 c 29 § 1; 1967 c 200 § 7; 1957 c 227 § 1; 1949 c 76 § 1; 1921 c 69 § 1; 1909 c 249 § 28; 1905 c 24 § 1; Rem. Supp. 1949 § 2280.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Effective date—2005 c 362: See note following RCW 9.94A.501.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

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

Intent—Reports—1982 1st ex.s. c 8: See note following RCW 7.68.035.

Probation: RCW 9.95.200 through 9.95.250.

Probation and parole services, provision by counties: RCW 36.01.070.

Restitution

alternative to fine: RCW 9A.20.030.

condition of probation: RCW 9.95.210.

disposition when victim not found or dead: RCW 7.68.290.

Additional notes found at www.leg.wa.gov

9.92.062 Suspended sentence—Termination date—

Application. In all cases prior to August 9, 1971, wherein the execution of sentence has been suspended pursuant to RCW 9.92.060, such person may apply to the court by which he or she was convicted and sentenced to establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. [2011 c 336 § 330; 1971 ex.s. c 188 § 1.]

Additional notes found at www.leg.wa.gov

9.92.080 Sentence on two or more convictions or counts. (1) Whenever a person while under sentence of felony shall commit another felony and be sentenced to another term of imprisonment, such latter term shall not begin until the expiration of all prior terms: PROVIDED, That any person granted probation pursuant to the provisions of RCW 9.95.210 and/or 9.92.060 shall not be considered to be under sentence of a felony for the purposes of this subsection.

(2) Whenever a person is convicted of two or more offenses which arise from a single act or omission, the sentences imposed therefor shall run concurrently, unless the court, in pronouncing sentence, expressly orders the service of said sentences to be consecutive.

(3) In all other cases, whenever a person is convicted of two or more offenses arising from separate and distinct acts or omissions, and not otherwise governed by the provisions of subsections (1) and (2) of this section, the sentences imposed therefor shall run consecutively, unless the court, in pronouncing the second or other subsequent sentences, expressly orders concurrent service thereof.

(4) The sentencing court may require the secretary of corrections, or his or her designee, to provide information to the court concerning the existence of all prior judgments against the defendant, the terms of imprisonment imposed, and the status thereof. [2011 c 336 § 331; 1981 c 136 § 35; 1971 ex.s. c 295 § 1; 1925 ex.s. c 109 § 2; 1909 c 249 § 33; RRS § 2285.]

Additional notes found at www.leg.wa.gov

9.92.110 Convicts protected—Forfeitures abolished.

Every person sentenced to imprisonment in any penal institution shall be under the protection of the law, and any unauthorized injury to his or her person shall be punished in the same manner as if he or she were not so convicted or sentenced. A conviction of crime shall not work a forfeiture of any prop-

erty, real or personal, or of any right or interest therein. All forfeitures in the nature of deodands, or in case of suicide or where a person flees from justice, are abolished. [2011 c 336 § 332; 1909 c 249 § 36; RRS § 2288.]

Inheritance rights of slayers or abusers: Chapter 11.84 RCW.

9.92.120 Conviction of public officer forfeits trust.

The conviction of a public officer of any felony or malfeasance in office shall entail, in addition to such other penalty as may be imposed, the forfeiture of his or her office, and shall disqualify him or her from ever afterward holding any public office in this state. [2011 c 336 § 333; 1909 c 249 § 37; RRS § 2289.]

Forfeiture or impeachment, rights preserved: RCW 42.04.040.

Misconduct of public officers: Chapter 42.20 RCW.

Vacancy of public office, causes: RCW 42.12.010.

Chapter 9.94A RCW

SENTENCING REFORM ACT OF 1981

Sections

9.94A.010	Purpose.
9.94A.030	Definitions.
9.94A.171	Tolling of term of confinement, supervision.
9.94A.190	Terms of more than one year or less than one year—Where served—Reimbursement of costs.
9.94A.480	Judgment and sentence document—Delivery to caseload forecast council.
9.94A.501	Department must supervise specified offenders—Risk assessment of felony offenders.
9.94A.5011	Supervision of specified offenders. (<i>Expires August 1, 2014.</i>)
9.94A.506	Standard sentence ranges—Limitations.
9.94A.525	Offender score.
9.94A.533	Adjustments to standard sentences.
9.94A.535	Departures from the guidelines.
9.94A.650	First-time offender waiver.
9.94A.685	Alien offenders.
9.94A.729	Earned release time—Risk assessments.
9.94A.74501	State council.
9.94A.74504	Supervision of transferred offenders—Processing transfer applications.
9.94A.760	Legal financial obligations.
9.94A.7606	Legal financial obligations—Order to withhold and deliver—Issuance and contents.
9.94A.7607	Legal financial obligations—Order to withhold and deliver—Duties and rights of person or entity served.
9.94A.7608	Legal financial obligations—Financial institutions—Service on main office or branch, effect—Collection actions against community bank account, court hearing.
9.94A.7609	Legal financial obligations—Notice of debt—Service or mailing—Contents—Action on, when.
9.94A.780	Offender supervision intake fees.
9.94A.850	Repealed.
9.94A.855	Repealed.
9.94A.860	Sentencing guidelines commission—Membership—Appointments—Terms of office—Expenses and compensation.
9.94A.863	Repealed.
9.94A.8671	Repealed.
9.94A.8672	Repealed.
9.94A.8673	Sex offender policy board—Membership—Expenses and compensation.
9.94A.8674	Repealed.
9.94A.8675	Repealed.
9.94A.8676	Repealed.
9.94A.8677	Repealed.
9.94A.8678	Repealed.
9.94A.880	Clemency and pardons board—Membership—Terms—Chair—Bylaws—Travel expenses—Staff.

9.94A.010 Purpose. The purpose of this chapter is to make the criminal justice system accountable to the public by

developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

(1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;

(2) Promote respect for the law by providing punishment which is just;

(3) Be commensurate with the punishment imposed on others committing similar offenses;

(4) Protect the public;

(5) Offer the offender an opportunity to improve himself or herself;

(6) Make frugal use of the state's and local governments' resources; and

(7) Reduce the risk of reoffending by offenders in the community. [2011 c 336 § 334; 1999 c 196 § 1; 1981 c 137 § 1.]

Report on Sentencing Reform Act of 1981: "The legislative budget committee shall prepare a report to be filed at the beginning of the 1987 session of the legislature. The report shall include a complete assessment of the impact of the Sentencing Reform Act of 1981. Such report shall include the effectiveness of the guidelines and impact on prison and jail populations and community correction programs." [1983 c 163 § 6.]

Additional notes found at www.leg.wa.gov

9.94A.030 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Confinement" means total or partial confinement.

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Domestic violence" has the same meaning as defined in RCW 10.99.020 and 26.50.010.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (*RCW 72.66.060), willful failure to return from work release (*RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(25) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(26) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(27) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(28) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(29) "Homelessness" or "homeless" means a condition where an individual lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is:

(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

(30) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(31) "Minor child" means a biological or adopted child of the offender who is under age eighteen at the time of the offender's current offense.

(32) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

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

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state

felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

(33) "Nonviolent offense" means an offense which is not a violent offense.

(34) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer ordered by a superior court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and supervised by the department pursuant to RCW 9.94A.501 and 9.94A.5011. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(35) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(36) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(37) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (37)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(38) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or pro-

moted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

(39) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(40) "Public school" has the same meaning as in RCW 28A.150.010.

(41) "Repetitive domestic violence offense" means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

(42) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(43) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(44) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(45) "Serious violent offense" is a subcategory of violent offense and means:

- (a)(i) Murder in the first degree;
- (ii) Homicide by abuse;
- (iii) Murder in the second degree;
- (iv) Manslaughter in the first degree;
- (v) Assault in the first degree;
- (vi) Kidnapping in the first degree;
- (vii) Rape in the first degree;
- (viii) Assault of a child in the first degree; or
- (ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or
- (b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(46) "Sex offense" means:

- (a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;
- (ii) A violation of RCW 9A.64.020;
- (iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;
- (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or
- (v) A felony violation of RCW 9A.44.132(1) (failure to register) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register) on at least one prior occasion;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(47) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(48) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(49) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(50) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(51) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(52) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(53) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(54) "Violent offense" means:

(a) Any of the following felonies:

- (i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;
- (ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;
- (iii) Manslaughter in the first degree;
- (iv) Manslaughter in the second degree;
- (v) Indecent liberties if committed by forcible compulsion;
- (vi) Kidnapping in the second degree;
- (vii) Arson in the second degree;
- (viii) Assault in the second degree;
- (ix) Assault of a child in the second degree;
- (x) Extortion in the first degree;
- (xi) Robbery in the second degree;
- (xii) Drive-by shooting;
- (xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and
- (xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(55) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(56) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(57) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. [2011 1st sp.s. c 40 § 8; 2011 c 87 § 2. Prior: 2010 c 274 § 401; 2010 c 267 § 9; 2010 c 227 § 11; 2010 c 224 § 1; 2009 c 375 § 4; (2009 c 375 § 3 expired August 1, 2009); 2009 c 28 § 4; prior: 2008 c 276 § 309; 2008 c 231 § 23; 2008 c 230 § 2; 2008 c 7 § 1; prior: 2006 c 139 § 5; (2006 c 139 § 4 expired July 1, 2006); 2006 c 124 § 1; 2006 c 122 § 7; (2006 c 122 § 6 expired July 1, 2006); 2006 c 73 § 5; 2005 c 436 § 1; 2003 c 53 § 55; prior: 2002 c 175 § 5; 2002 c 107 § 2; prior: 2001 2nd sp.s. c 12 § 301; 2001 c 300 § 3; 2001 c 7 § 2; prior: 2001 c 287 § 4; 2001 c 95 § 1; 2000 c 28 § 2; 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c

144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

Reviser's note: *(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

(2) This section was amended by 2011 c 87 § 2 and by 2011 1st sp.s. c 40 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

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

Application—2010 c 267: See note following RCW 9A.44.128.

Expiration date—2009 c 375 §§ 1, 3, and 13: See note following RCW 9.94A.501.

Application—2009 c 375: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Delayed effective date—2008 c 230 §§ 1-3: See note following RCW 9A.44.130.

Short title—2008 c 7: "This act may be known and cited as the Chelsea Harrison act." [2008 c 7 § 2.]

Effective date—2006 c 139 § 5: "Section 5 of this act takes effect July 1, 2006." [2006 c 139 § 7.]

Expiration date—2006 c 139 § 4: "Section 4 of this act expires July 1, 2006." [2006 c 139 § 6.]

Effective date—2006 c 124: "Except for section 2 of this act, this act takes effect July 1, 2006." [2006 c 124 § 5.]

Effective date—2006 c 122 §§ 5 and 7: See note following RCW 9.94A.507.

Expiration date—2006 c 122 §§ 4 and 6: See note following RCW 9.94A.507.

Effective date—2006 c 122 §§ 1-4 and 6: See note following RCW 9.94A.836.

Effective date—2006 c 73: See note following RCW 46.61.502.

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

Effective date—2002 c 175: See note following RCW 7.80.130.

Finding—2002 c 107: "The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be "revived" because they were never vacated. As noted in the minority opinions in *Cruz* and *Smith*, such application of the law does not involve retroac-

tive application or violate ex postfacto prohibitions. Additionally, the Washington state supreme court has repeatedly held in the past that the provisions of the sentencing reform act act upon and punish only current conduct; the sentencing reform act does not act upon or alter the punishment for prior convictions. See *In re Personal Restraint Petition of Williams*, 111 Wn.2d 353, (1988). The legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense." [2002 c 107 § 1.]

Application—2002 c 107: "RCW 9.94A.030(13) (b) and (c) and 9.94A.525(18) apply only to current offenses committed on or after June 13, 2002. No offender who committed his or her current offense prior to June 13, 2002, may be subject to resentencing as a result of this act." [2002 c 107 § 4.]

Application—2001 2nd sp.s. c 12 §§ 301-363: "(1) Sections 301 through 363 of this act shall not affect the validity of any sentence imposed under any other law for any offense committed before, on, or after September 1, 2001.

(2) Sections 301 through 363 of this act shall apply to offenses committed on or after September 1, 2001." [2001 2nd sp.s. c 12 § 503.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Effective dates—2001 c 287: See note following RCW 9A.76.115.

Effective date—2001 c 95: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 95 § 3.]

Finding—Intent—2001 c 7: "The legislature finds that an ambiguity may exist regarding whether out-of-state convictions or convictions under prior Washington law, for sex offenses that are comparable to current Washington offenses, count when determining whether an offender is a persistent offender. This act is intended to clarify the legislature's intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of a persistent offender." [2001 c 7 § 1.]

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

Finding—1996 c 275: See note following RCW 9.94A.505.

Purpose—1995 c 268: "In order to eliminate a potential ambiguity over the scope of the term "sex offense," this act clarifies that for general purposes the definition of "sex offense" does not include any misdemeanors or gross misdemeanors. For purposes of the registration of sex offenders pursuant to RCW 9A.44.130, however, the definition of "sex offense" is expanded to include those gross misdemeanors that constitute attempts, conspiracies, and solicitations to commit class C felonies." [1995 c 268 § 1.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

Purpose—1989 c 252: "The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

State preemption of criminal street gang definitions: Chapter 9.101 RCW.

Additional notes found at www.leg.wa.gov

9.94A.171 Tolling of term of confinement, supervision. (1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction.

(2) Any term of community custody shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of

the entity under whose supervision the offender has been placed.

(3)(a) For offenders other than sex offenders serving a sentence for a sex offense as defined in RCW 9.94A.030, any period of community custody shall be tolled during any period of time the offender is in confinement for any reason unless the offender is detained pursuant to RCW 9.94A.740 or 9.94A.631 for the period of time prior to the hearing or for confinement pursuant to sanctions imposed for violation of sentence conditions, in which case, the period of community custody shall not toll. However, sanctions that result in the imposition of the remaining sentence or the original sentence will continue to toll the period of community custody. In addition, inpatient treatment ordered by the court in lieu of jail time shall not toll the period of community custody.

(b) For sex offenders serving a sentence for a sex offense as defined in RCW 9.94A.030, any period of community custody shall be tolled during any period of time the sex offender is in confinement for any reason.

(4) For terms of confinement or community custody, the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

(5) For the purposes of this section, "tolling" means the period of time in which community custody or confinement time is paused and for which the offender does not receive credit towards the term ordered. [2011 1st sp.s. c 40 § 1; 2008 c 231 § 28; 2000 c 226 § 5. Prior: 1999 c 196 § 7; 1999 c 143 § 14; 1993 c 31 § 2; 1988 c 153 § 9; 1981 c 137 § 17. Formerly RCW 9.94A.625, 9.94A.170.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.94A.190 Terms of more than one year or less than one year—Where served—Reimbursement of costs. (1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state, or in home detention pursuant to RCW 9.94A.6551. Except as provided in subsection (3) or (5) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the leg-

islature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.589.

(4) Notwithstanding any other provision of this section, a sentence imposed pursuant to RCW 9.94A.660 which has a standard sentence range of over one year, regardless of length, shall be served in a facility or institution operated, or utilized under contract, by the state.

(5) Sentences imposed pursuant to RCW 9.94A.507 shall be served in a facility or institution operated, or utilized under contract, by the state. [2010 c 224 § 10; (2011 c 96 § 11 repealed by 2011 1st sp.s. c 40 § 43); 2009 c 28 § 5; 2001 2nd sp.s. c 12 § 313; 2000 c 28 § 4; 1995 c 108 § 4; 1991 c 181 § 5; 1988 c 154 § 5; 1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]

Reviser's note: RCW 9.94A.190 was amended by 2011 c 96 § 11, but 2011 c 96 § 11 was later repealed by 2011 1st sp.s. c 40 § 43, without taking effect.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.480 Judgment and sentence document—Delivery to caseload forecast council. (1) A current, newly created or reworked judgment and sentence document for each felony sentencing shall record any and all recommended sentencing agreements or plea agreements and the sentences for any and all felony crimes kept as public records under RCW 9.94A.475 shall contain the clearly printed name and legal signature of the sentencing judge. The judgment and sentence document as defined in this section shall also provide additional space for the sentencing judge's reasons for going either above or below the presumptive sentence range for any and all felony crimes covered as public records under RCW 9.94A.475. Both the sentencing judge and the prosecuting attorney's office shall each retain or receive a completed copy of each sentencing document as defined in this section for their own records.

(2) The caseload forecast council shall be sent a completed copy of the judgment and sentence document upon conviction for each felony sentencing under subsection (1) of this section.

(3) If any completed judgment and sentence document as defined in subsection (1) of this section is not sent to the caseload forecast council as required in subsection (2) of this section, the caseload forecast council shall have the authority and shall undertake reasonable and necessary steps to assure that all past, current, and future sentencing documents as defined in subsection (1) of this section are received by the

caseload forecast council. [2011 1st sp.s. c 40 § 27; 2002 c 290 § 16; 1997 c 338 § 49; 1995 c 129 § 6 (Initiative Measure No. 159). Formerly RCW 9.94A.105.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

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

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

Findings and intent—Short title—Severability—Captions not law—1995 c 129: See notes following RCW 9.94A.510.

Additional notes found at www.leg.wa.gov

9.94A.501 Department must supervise specified offenders—Risk assessment of felony offenders. (1) The department shall supervise the following offenders who are sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) Offenders convicted of:

- (i) Sexual misconduct with a minor second degree;
- (ii) Custodial sexual misconduct second degree;
- (iii) Communication with a minor for immoral purposes;

and

(iv) Violation of RCW 9A.44.132(2) (failure to register);

and

(b) Offenders who have:

(i) A current conviction for a repetitive domestic violence offense where domestic violence has been plead and proven after August 1, 2011; and

(ii) A prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011.

(2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.

(3) The department shall supervise every felony offender sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk assessment classifies the offender as one who is at a high risk to reoffend.

(4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:

(a) Has a current conviction for a sex offense or a serious violent offense and was sentenced to a term of community custody pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;

(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;

(d) Has a current conviction for violating RCW 9A.44.132(1) (failure to register) and was sentenced to a term of community custody pursuant to RCW 9.94A.701;

(e) Has a current conviction for a domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence offense or domestic violence felony offense where domestic violence has been plead and proven after August 1, 2011;

(f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or 9.94A.670; or

(g) Is subject to supervision pursuant to RCW 9.94A.745.

(5) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under this section or RCW 9.94A.5011.

(6) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision under this section or RCW 9.94A.5011. [2011 1st sp.s. c 40 § 2. Prior: 2010 c 267 § 10; 2010 c 224 § 3; 2009 c 376 § 2; (2009 c 376 § 1 expired August 1, 2009); 2009 c 375 § 2; (2009 c 375 § 1 expired August 1, 2009); 2008 c 231 § 24; 2005 c 362 § 1; 2003 c 379 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: "(1) Except as otherwise provided in this section, the provisions of this act apply to persons convicted before, on, or after June 15, 2011.

(2) By January 1, 2012, consistent with RCW 9.94A.171, 9.94A.501, and section 3 of this act, the department of corrections shall recalculate the term of community custody for offenders currently in confinement or serving a term of community custody. The department of corrections shall reset the date that community custody will end for those offenders. The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject.

(3) By January 1, 2012, consistent with the provisions of RCW 9.94A.650, the department of corrections shall recalculate the term of community custody for each offender sentenced to a first-time offender waiver under RCW 9.94A.650 and currently in confinement or serving a term of community custody. The department of corrections shall reset the date that community custody will end for those offenders. The recalculation shall not extend a term of community custody beyond that to which an offender is currently subject." [2011 1st sp.s. c 40 § 42.]

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: "Sections 1 through 9 and 42 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 15, 2011]." [2011 1st sp.s. c 40 § 44.]

Application—2010 c 267: See note following RCW 9A.44.128.

Expiration date—2009 c 376 § 1: "Section 1 of this act expires August 1, 2009." [2009 c 376 § 4.]

Expiration date—2009 c 375 §§ 1, 3, and 13: "Sections 1, 3, and 13 of this act expire August 1, 2009." [2009 c 375 § 19.]

Application—2009 c 375: "This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody or probation with the department, or sentenced after July 26, 2009." [2009 c 375 § 20.]

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Effective date—2005 c 362: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005]." [2005 c 362 § 5.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Conditions of probation: RCW 9.95.210.

Misdemeanant probation services—County supervision: RCW 9.95.204.

Suspending sentences: RCW 9.92.060.

9.94A.5011 Supervision of specified offenders. (Expires August 1, 2014.) (1) The department shall supervise every offender convicted prior to August 2, 2011, of a

misdemeanor or gross misdemeanor offense who is sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, for an offense as provided in this subsection. The superior court shall order probation for offenders who have:

(a) A current conviction for fourth degree assault or violation of a domestic violence court order pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145; and

(b) A prior conviction for one or more of the following:

(i) A violent offense;

(ii) A sex offense;

(iii) A crime against a person as provided in RCW 9.94A.411;

(iv) Fourth degree assault; or

(v) Violation of a domestic violence court order.

(2) This section expires August 1, 2014. [2011 1st sp.s. c 40 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

9.94A.506 Standard sentence ranges—Limitations.

The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

(1) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(2) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(3) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021. [2011 1st sp.s. c 40 § 26.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

9.94A.525 Offender score. The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.589.

(2)(a) Class A and sex prior felony convictions shall always be included in the offender score.

(b) Class B prior felony convictions other than sex offenses shall not be included in the offender score, if since the last date of release from confinement (including full-time

residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(c) Except as provided in (e) of this subsection, class C prior felony convictions other than sex offenses shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction.

(d) Except as provided in (e) of this subsection, serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction.

(e) If the present conviction is felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions of felony driving while under the influence of intoxicating liquor or any drug, felony physical control of a vehicle while under the influence of intoxicating liquor or any drug, and serious traffic offenses shall be included in the offender score if: (i) The prior convictions were committed within five years since the last date of release from confinement (including full-time residential treatment) or entry of judgment and sentence; or (ii) the prior convictions would be considered "prior offenses within ten years" as defined in RCW 46.61.5055.

(f) Prior convictions for a repetitive domestic violence offense, as defined in RCW 9.94A.030, shall not be included in the offender score if, since the last date of release from confinement or entry of judgment and sentence, the offender had spent ten consecutive years in the community without committing any crime that subsequently results in a conviction.

(g) This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. Federal convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law. If there is no clearly comparable offense under Washington law or the offense is one that is usually considered subject to exclusive federal jurisdiction, the offense shall be scored as a class C felony equivalent if it was a felony under the relevant federal statute.

(4) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

(5)(a) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to encompass the same criminal conduct,

shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently or prior juvenile offenses for which sentences were served consecutively, whether those offenses shall be counted as one offense or as separate offenses using the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used. The current sentencing court may presume that such other prior offenses were not the same criminal conduct from sentences imposed on separate dates, or in separate counties or jurisdictions, or in separate complaints, indictments, or informations;

(ii) In the case of multiple prior convictions for offenses committed before July 1, 1986, for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. Use the conviction for the offense that yields the highest offender score.

(b) As used in this subsection (5), "served concurrently" means that: (i) The latter sentence was imposed with specific reference to the former; (ii) the concurrent relationship of the sentences was judicially imposed; and (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

(6) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense. When these convictions are used as criminal history, score them the same as a completed crime.

(7) If the present conviction is for a nonviolent offense and not covered by subsection (11), (12), or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

(8) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), (12), or (13) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(9) If the present conviction is for a serious violent offense, count three points for prior adult and juvenile convictions for crimes in this category, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) of this section; however count two points for each prior adult Burglary 2 or residential burglary conviction, and one point for each prior juvenile Burglary 2 or residential burglary conviction.

(11) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; for each serious traffic offense, other than those used for an enhancement pursu-

ant to RCW 46.61.520(2), count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for operation of a vessel while under the influence of intoxicating liquor or any drug.

(12) If the present conviction is for homicide by watercraft or assault by watercraft count two points for each adult or juvenile prior conviction for homicide by watercraft or assault by watercraft; for each felony offense count one point for each adult and 1/2 point for each juvenile prior conviction; count one point for each adult and 1/2 point for each juvenile prior conviction for driving under the influence of intoxicating liquor or any drug, actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, or operation of a vessel while under the influence of intoxicating liquor or any drug.

(13) If the present conviction is for manufacture of methamphetamine count three points for each adult prior manufacture of methamphetamine conviction and two points for each juvenile manufacture of methamphetamine offense. If the present conviction is for a drug offense and the offender has a criminal history that includes a sex offense or serious violent offense, count three points for each adult prior felony drug offense conviction and two points for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection (8) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(14) If the present conviction is for Escape from Community Custody, RCW 72.09.310, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.

(15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

(16) If the present conviction is for Burglary 2 or residential burglary, count priors as in subsection (7) of this section; however, count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 or residential burglary conviction, and one point for each juvenile prior Burglary 2 or residential burglary conviction.

(17) If the present conviction is for a sex offense, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(18) If the present conviction is for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, count priors as in subsections (7) through (11) and (13) through (16) of this section; however count three points for each adult and juvenile prior sex offense conviction, excluding prior convictions for failure to register as a sex offender under RCW *9A.44.130 or 9A.44.132, which shall count as one point.

(19) If the present conviction is for an offense committed while the offender was under community custody, add one point. For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.94B RCW.

(20) If the present conviction is for Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2, count priors as in subsections (7) through (18) of this section; however count one point for prior convictions of Vehicle Prowling 2, and three points for each adult and juvenile prior Theft 1 (of a motor vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without Permission 2 conviction.

(21) If the present conviction is for a felony domestic violence offense where domestic violence as defined in RCW 9.94A.030 was plead and proven, count priors as in subsections (7) through (20) of this section; however, count points as follows:

(a) Count two points for each adult prior conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the following offenses: A violation of a no-contact order that is a felony offense, a violation of a protection order that is a felony offense, a felony domestic violence harassment offense, a felony domestic violence stalking offense, a domestic violence Burglary 1 offense, a domestic violence Kidnapping 1 offense, a domestic violence Kidnapping 2 offense, a domestic violence unlawful imprisonment offense, a domestic violence Robbery 1 offense, a domestic violence Robbery 2 offense, a domestic violence Assault 1 offense, a domestic violence Assault 2 offense, a domestic violence Assault 3 offense, a domestic violence Arson 1 offense, or a domestic violence Arson 2 offense;

(b) Count one point for each second and subsequent juvenile conviction where domestic violence as defined in RCW 9.94A.030 was plead and proven after August 1, 2011, for the offenses listed in (a) of this subsection; and

(c) Count one point for each adult prior conviction for a repetitive domestic violence offense as defined in RCW 9.94A.030, where domestic violence as defined in RCW 9.94A.030, was plead and proven after August 1, 2011.

(22) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions. Prior convictions that were not included in criminal history or in the offender score shall be included upon any resentencing to ensure imposition of an accurate sentence. [2011 c 166 § 3; 2010 c 274 § 403; 2008 c 231 § 3. Prior: 2007 c 199 § 8; 2007 c 116 § 1; prior: 2006 c 128 § 6; 2006 c 73 § 7; prior: 2002 c 290 § 3; 2002 c 107 § 3; 2001 c 264 § 5; 2000 c 28 § 15; prior: 1999 c 352 § 10; 1999 c 331 § 1; 1998 c 211 § 4; 1997 c 338 § 5; prior: 1995 c 316 § 1; 1995 c 101 § 1; prior: 1992 c 145 § 10; 1992 c 75 § 4; 1990 c 3 § 706; 1989 c 271 § 103; prior: 1988 c 157

§ 3; 1988 c 153 § 12; 1987 c 456 § 4; 1986 c 257 § 25; 1984 c 209 § 19; 1983 c 115 § 7. Formerly RCW 9.94A.360.]

***Reviser's note:** 2010 c 267 removed from RCW 9A.44.130 provisions relating to the crime of "failure to register" as a sex offender or kidnapping offender, and placed similar provisions in RCW 9A.44.132.

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

Intent—2008 c 231 §§ 2-4: See note following RCW 9.94A.500.

Application—2008 c 231 §§ 2 and 3: See note following RCW 9.94A.500.

Severability—2008 c 231: See note following RCW 9.94A.500.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2007 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 116 § 2.]

Effective date—2006 c 73: See note following RCW 46.61.502.

Effective date—2002 c 290 §§ 2 and 3: See note following RCW 9.94A.515.

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

Finding—Application—2002 c 107: See notes following RCW 9.94A.030.

Effective date—2001 c 264: See note following RCW 9A.76.110.

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

Additional notes found at www.leg.wa.gov

9.94A.533 Adjustments to standard sentences. (1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at

least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055. All enhancements under this subsection shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addi-

tion of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831. [2011 c 293 § 9; 2009 c 141 § 2. Prior:

2008 c 276 § 301; 2008 c 219 § 3; 2007 c 368 § 9; prior: 2006 c 339 § 301; 2006 c 123 § 1; 2003 c 53 § 58; 2002 c 290 § 11.]

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Short title—2008 c 219: See note following RCW 9.94A.834.

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

Effective date—2006 c 123: "This act takes effect July 1, 2006." [2006 c 123 § 4.]

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

Effective date—2002 c 290 §§ 7-11 and 14-23: See note following RCW 9.94A.515.

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

9.94A.535 Departures from the guidelines. The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(j) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

(bb) The current offense involved paying to view, over the internet in violation of RCW 9.68A.075, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

(cc) The offense was intentionally committed because the defendant perceived the victim to be homeless, as defined

in RCW 9.94A.030. [2011 c 87 § 1. Prior: 2010 c 274 § 402; 2010 c 227 § 10; 2010 c 9 § 4; prior: 2008 c 276 § 303; 2008 c 233 § 9; 2007 c 377 § 10; 2005 c 68 § 3; 2003 c 267 § 4; 2002 c 169 § 1; 2001 2nd sp.s. c 12 § 314; 2000 c 28 § 8; 1999 c 330 § 1; 1997 c 52 § 4; prior: 1996 c 248 § 2; 1996 c 121 § 1; 1995 c 316 § 2; 1990 c 3 § 603; 1989 c 408 § 1; 1987 c 131 § 2; 1986 c 257 § 27; 1984 c 209 § 24; 1983 c 115 § 10. Formerly RCW 9.94A.390.]

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

Intent—2010 c 9: See note following RCW 69.50.315.

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

Captions not law—Severability—2007 c 377: See RCW 19.290.900 and 19.290.901.

Intent—Severability—Effective date—2005 c 68: See notes following RCW 9.94A.537.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.650 First-time offender waiver. (1) This section applies to offenders who have never been previously convicted of a felony in this state, federal court, or another state, and who have never participated in a program of deferred prosecution for a felony, and who are convicted of a felony that is not:

(a) Classified as a violent offense or a sex offense under this chapter;

(b) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV;

(c) Manufacture, delivery, or possession with intent to deliver a methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2);

(d) The selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana; or

(e) Felony driving while under the influence of intoxicating liquor or any drug or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(2) In sentencing a first-time offender the court may waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses.

(3) The court may impose up to six months of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed one year.

(4) As a condition of community custody, in addition to any conditions authorized in RCW 9.94A.703, the court may order the offender to pay all court-ordered legal financial obligations and/or perform community restitution work. [2011 1st sp.s. c 40 § 9; 2008 c 231 § 29; 2006 c 73 § 9; 2002 c 175 § 9; 2000 c 28 § 18.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Effective date—2006 c 73: See note following RCW 46.61.502.

Effective date—2002 c 175: See note following RCW 7.80.130.

Additional notes found at www.leg.wa.gov

9.94A.685 Alien offenders. (1) Subject to the limitations of this section, any alien offender committed to the custody of the department under the sentencing reform act of 1981, chapter 9.94A RCW, who has been found by the United States attorney general to be subject to a final order of deportation or exclusion, may be placed on conditional release status and released to the immigration and customs enforcement agency for deportation at any time prior to the expiration of the offender's term of confinement. Conditional release shall continue until the expiration of the statutory maximum sentence provided by law for the crime or crimes of which the offender was convicted. If the offender has multiple current convictions, the statutory maximum sentence allowed by law for each crime shall run concurrently.

(2) No offender may be released under this section unless the secretary or the secretary's designee has reached an agreement with the immigration and customs enforcement agency that the alien offender placed on conditional release status will be detained in total confinement at a facility operated by the immigration and customs enforcement agency pending the offender's return to the country of origin or other location designated in the final deportation or exclusion order.

No offender may be released under this section who is serving a sentence for a violent offense or sex offense, as defined in RCW 9.94A.030.

(3) The unserved portion of the term of confinement of any offender released under this section shall be tolled at the time the offender is released to the immigration and customs enforcement agency for deportation. Upon the release of an offender to the immigration and customs enforcement agency, the department shall issue a warrant for the offender's arrest within the United States. This warrant shall remain in effect indefinitely.

(4) Upon arrest of an offender, the department may seek extradition as necessary and the offender may be returned to the department for completion of the unserved portion of the offender's term of total confinement. If returned, the offender shall also be required to fully comply with all the terms and conditions of the sentence.

(5) Alien offenders released to the immigration and customs enforcement agency for deportation under this section are not thereby relieved of their obligation to pay restitution or other legal financial obligations ordered by the sentencing court.

(6) Any offender released pursuant to this section who returns illegally to the United States may not thereafter be released again pursuant to this section.

(7) The secretary is authorized to take all reasonable actions to implement this section and shall assist federal authorities in prosecuting alien offenders who may illegally reenter the United States and enter the state of Washington.

(8) The provisions of this section apply to persons convicted before, on, or after April 29, 2011. [2011 c 206 § 1; 1993 c 419 § 1. Formerly RCW 9.94A.280.]

Effective date—2011 c 206: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 29, 2011]." [2011 c 206 § 4.]

9.94A.729 Earned release time—Risk assessments.

(1)(a) The term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and adopted by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits.

(b) Any program established pursuant to this section shall allow an offender to earn early release credits for pre-sentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. The department may approve a jail certification from a correctional agency that calculates earned release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence.

(2) An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(3) An offender may earn early release time as follows:

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence.

(b) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(c) An offender is qualified to earn up to fifty percent of aggregate earned release time if he or she:

(i) Is not classified as an offender who is at a high risk to reoffend as provided in subsection (4) of this section;

(ii) Is not confined pursuant to a sentence for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(iii) Has no prior conviction for the offenses listed in (c)(ii) of this subsection;

(iv) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(v) Has not committed a new felony after July 22, 2007, while under community custody.

(d) In no other case shall the aggregate earned release time exceed one-third of the total sentence.

(4) The department shall perform a risk assessment of each offender who may qualify for earned early release under subsection (3)(c) of this section utilizing the risk assessment tool recommended by the Washington state institute for public policy. Subsection (3)(c) of this section does not apply to offenders convicted after July 1, 2010.

(5)(a) A person who is eligible for earned early release as provided in this section and who will be supervised by the department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to community custody in lieu of earned release time;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department is unable to approve the offender's release plan, the department may do one or more of the following:

(i) Transfer an offender to partial confinement in lieu of earned early release for a period not to exceed three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in RCW 9.94A.728(5);

(ii) Provide rental vouchers to the offender for a period not to exceed three months if rental assistance will result in an approved release plan. The voucher must be provided in conjunction with additional transition support programming or services that enable an offender to participate in services including, but not limited to, substance abuse treatment, men-

tal health treatment, sex offender treatment, educational programming, or employment programming;

(e) For each offender who is the recipient of a rental voucher, the department shall include, concurrent with the data that the department otherwise obtains and records, the housing status of the offender for the duration of the offender's supervision.

(6) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section. [2011 1st sp.s. c 40 § 4; 2010 c 224 § 7; 2009 c 455 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Effective date—2009 c 455 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2009]." [2009 c 455 § 7.]

9.94A.74501 State council. (1) The department of corrections shall serve as the state council for interstate adult offender supervision as required under article IV of RCW 9.94A.745, the interstate compact for adult offender supervision. The department of corrections may form a subcommittee, including members representing the legislative, judicial, and executive branches of state government, and victims' groups to perform the functions of the state council. Any such subcommittee shall include representation of both houses and at least two of the four largest political caucuses in the legislature.

(2) The department or a subcommittee if formed for that purpose, shall:

(a) Review department operations and procedures under RCW 9.94A.745, and recommend policies to the compact administrator, including policies to be pursued in the administrator's capacity as the state's representative on the interstate commission created under article III of RCW 9.94A.745; and

(b) Report annually to the legislature on interstate supervision operations and procedures under RCW 9.94A.745, including recommendations for policy changes.

(3) The secretary shall appoint an employee of the department, or a subcommittee if formed for that purpose shall appoint one of its members, to represent the state at meetings of the interstate commission created under article III of RCW 9.94A.745 when the compact administrator cannot attend. [2011 1st sp.s. c 40 § 31; 2001 c 35 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

9.94A.74504 Supervision of transferred offenders—Processing transfer applications. (1) The department may supervise nonfelony offenders transferred to Washington pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision, and shall supervise these offenders according to the provisions of this chapter.

(2) The department shall process applications for interstate transfer of felony and nonfelony offenders requesting transfer of supervision out-of-state pursuant to RCW 9.94A.745, the interstate compact for adult offender supervi-

sion, and may charge offenders a reasonable fee for processing the application.

(3) The department shall adopt a rule prescribing the amount of the interstate transfer application fee. [2011 1st sp.s. c 40 § 14; 2005 c 400 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Application—2005 c 400: "This act applies to offenders sentenced before, on, or after July 1, 2005." [2005 c 400 § 8.]

Effective date—2005 c 400: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 400 § 9.]

9.94A.760 Legal financial obligations. (1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation.

tion, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740.

(11)(a) The administrative office of the courts shall mail individualized periodic billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(b) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(c) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(d) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, and who remains under the jurisdiction of the court for payment of legal financial obligations. [2011 c 106 § 3; 2008 c 231 § 35; 2005 c 263 § 1; 2004 c 121 § 3; 2003 c 379 § 14; 2001 c 10 § 3. Prior: 2000 c 226 § 4; 2000 c 28 § 31; 1999 c 196 § 6; prior: 1997 c 121 § 5; 1997 c 52 § 3; 1995 c 231 § 3; 1991 c 93 § 2; 1989 c 252 § 3. Formerly RCW 9.94A.145.]

Finding—2011 c 106: See note following RCW 10.82.090.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Intent—Purpose—2003 c 379 §§ 13-27: "The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27, chapter 379, Laws of 2003 is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for [of] the courts. The legislature undertakes this effort following a collaboration between local officials, the department of corrections, and the administrative office for [of] the courts. The intent of sections 13 through 27, chapter 379, Laws of 2003 is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections." [2003 c 379 § 13.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Effective date—2001 c 10: See notes following RCW 9.94A.505.

Finding—Intent—Severability—2000 c 226: See notes following RCW 9.94A.505.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.7606 Legal financial obligations—Order to withhold and deliver—Issuance and contents. (1) The department or county clerk may issue to any person or entity, except to the department, an order to withhold and deliver property of any kind, including but not restricted to, earnings that are due, owing, or belonging to the offender, if the department or county clerk has reason to believe that there is in the possession of such person or entity, property that is due, owing, or belonging to the offender. Such order to withhold and deliver may be issued when a court-ordered legal financial obligation payment is past due:

(a) If an offender's judgment and sentence or a subsequent order to pay includes a statement that other income-withholding action under this chapter may be taken without further notice to the offender.

(b) If a judgment and sentence or a subsequent order to pay does not include the statement that other income-withholding action under this chapter may be taken without further notice to the offender but the department or county clerk has served a notice on the offender stating such requirements and authorizations. The service shall have been made by personal service or any form of mail requiring a return receipt.

(2) The order to withhold and deliver shall:

(a) Include the amount of the court-ordered legal financial obligation;

(b) Contain a summary of moneys that may be exempt from the order to withhold and deliver and a summary of the civil liability upon failure to comply with the order; and

(c) Be served by personal service or by any form of mail requiring a return receipt.

(3) The department or county clerk shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by any form of mail requiring a return receipt, a copy of the order to withhold and deliver to the offender at the offender's last known post office address, or, in the alternative, a copy of the order shall be personally served on the offender on or before the date of service of the order or within two days thereafter. The copy of the order

shall be mailed or served together with an explanation of the right to petition for judicial review. If the copy is not mailed or served as this section provides, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the offender promptly made and supported by affidavit showing that the offender has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver. [2011 c 106 § 5; 1991 c 93 § 7. Formerly RCW 9.94A.200030.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.7607 Legal financial obligations—Order to withhold and deliver—Duties and rights of person or entity served. (1) A person or entity upon whom service has been made is hereby required to:

(a) Answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the order; and

(b) Provide further and additional answers when requested by the department or county clerk.

(2) Any person or entity in possession of any property that may be subject to the order to withhold and deliver shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver;

(ii) Deliver the property to the appropriate clerk of the court as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the offender at each succeeding disbursement interval and deliver amounts withheld from earnings to the appropriate clerk of the court within ten days of the date earnings are payable to the offender;

(iv) Inform the department or county clerk of the date the amounts were withheld as requested under this section; or

(b) Furnish the appropriate clerk of the court a good and sufficient bond, satisfactory to the clerk, conditioned upon final determination of liability.

(3) Where money is due and owing under any contract of employment, expressed or implied, or other employment arrangement, or is held by any person or entity subject to withdrawal by the offender, the money shall be delivered by remittance payable to the order of the appropriate clerk of the court.

(4) Delivery to the appropriate clerk of the court of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(5) The person or entity required to withhold and deliver the earnings of a debtor under this action may deduct a processing fee from the remainder of the offender's earnings, even if the remainder would otherwise be exempt under RCW 9.94A.761. The processing fee may not exceed:

(a) Ten dollars for the first disbursement to the appropriate clerk of the court; and

(b) One dollar for each subsequent disbursement.

(6) A person or entity shall be liable to the obligee in an amount equal to one hundred percent of the value of the court-ordered legal financial obligation that is the basis of the order to withhold and deliver, or the amount that should have

been withheld, whichever amount is less, together with costs, interest, and reasonable attorneys' fees if that person or entity fails or refuses to deliver property under the order.

The department or county clerk is authorized to issue a notice of debt pursuant to and to take appropriate action to collect the debt under this chapter if a judgment has been entered as the result of an action by the court against a person or entity based on a violation of this section.

(7) Persons or entities delivering money or property to the appropriate clerk of the court under this chapter shall not be held liable for wrongful delivery.

(8) Persons or entities withholding money or property under this chapter shall not be held liable for wrongful withholding. [2011 c 106 § 6; 1991 c 93 § 8. Formerly RCW 9.94A.200035.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.7608 Legal financial obligations—Financial institutions—Service on main office or branch, effect—Collection actions against community bank account, court hearing. An order to withhold and deliver or any other income-withholding action authorized by this chapter may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of the financial institution. Service on the main office shall be effective to attach the deposits of an offender in the financial institution and compensation payable for personal services due the offender from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the offender, excluding compensation payable for personal services, in the possession or control of the particular branch served.

Notwithstanding any other provision of RCW 9.94A.760 and 9.94A.7601 through 9.94A.761, if the department or county clerk initiates collection action against a joint bank account, with or without the right of survivorship, or any other funds which are subject to the community property laws of this state, notice shall be given to all affected parties that the account or funds are subject to potential withholding. Such notice shall be by first-class mail, return receipt required, or by personal service and be given at least twenty calendar days before withholding is made. Upon receipt of such notice, the nonobligated person shall have ten calendar days to file a petition with the department or the superior court contesting the withholding of his or her interest in the account or funds. The department or county clerk shall provide notice of the right of the filing of the petition with the notice provided in this paragraph. If the petition is not filed within the period provided for herein, the department or county clerk is authorized to proceed with the collection action. [2011 c 106 § 7; 1991 c 93 § 9. Formerly RCW 9.94A.200040.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.7609 Legal financial obligations—Notice of debt—Service or mailing—Contents—Action on, when. (1) The department or county clerk may issue a notice of debt in order to enforce and collect a court-ordered legal financial

obligation debt through either a notice of payroll deduction or an order to withhold and deliver.

(2) The notice of debt may be personally served upon the offender or be mailed to the offender at his or her last known address by any form of mail requiring a return receipt, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the total court-ordered legal financial obligation and the amount to be paid each month.

(b) A statement that earnings are subject to a notice of payroll deduction.

(c) A statement that earnings or property, or both, are subject to an order to withhold and deliver.

(d) A statement that the net proceeds will be applied to the satisfaction of the court-ordered legal financial obligation.

(4) Action to collect a court-ordered legal financial obligation by notice of payroll deduction or an order to withhold and deliver shall be lawful after twenty days from the date of service upon the offender or twenty days from the receipt or refusal by the offender of the notice of debt.

(5) The notice of debt will take effect only if the offender's monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

(6) The department or county clerk shall not be required to issue or serve the notice of debt in order to enforce and collect a court-ordered legal financial obligation debt through either a notice of payroll deduction or an order to withhold and deliver if either the offender's judgment and sentence or a subsequent order to pay includes a statement that income-withholding action under this chapter may be taken without further notice to the offender. [2011 c 106 § 8; 1991 c 93 § 10. Formerly RCW 9.94A.200045.]

Finding—2011 c 106: See note following RCW 10.82.090.

Additional notes found at www.leg.wa.gov

9.94A.780 Offender supervision intake fees. (1) Whenever a punishment imposed under this chapter requires supervision services to be provided, the offender shall pay to the department of corrections the supervision intake fee, prescribed under subsection (2) of this section, which shall be considered as payment or part payment of the cost of establishing supervision to the offender. The department may exempt or defer a person from the payment of all or any part of the intake fee based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such a payment.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him or her from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the intake fee constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The supervision intake fee shall be imposed after the determination of eligibility for supervision has been completed. For offenders whose crime was committed on or after October 1, 2011, the intake fee prescribed shall be not less than four hundred dollars or more than six hundred dollars, and shall be assessed for each judgment and sentence imposed by the superior court in which supervision by the department is required.

(3) For offenders whose offense date was before October 1, 2011, the monthly rate shall be converted to a one-time fee. The amount due shall be based upon the most recent monthly fee amount by the months of supervision left to serve, but in no case shall exceed six hundred dollars.

(4) Nothing in chapter 40, Laws of 2011 1st sp. sess. shall affect the amount or dates payments are due for any prior balances owed by an offender for the cost of supervision.

(5) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(6) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982.

(7) If a county clerk assumes responsibility for collection of unpaid legal financial obligations under RCW 9.94A.760, or under any agreement with the department under that section, whether before or after the completion of any period of community custody, the clerk may impose a monthly or annual assessment for the cost of collections. The amount of the assessment shall not exceed the actual cost of collections. The county clerk may exempt or defer payment of all or part of the assessment based upon any of the factors listed in subsection (1) of this section. The offender shall pay the assessment under this subsection to the county clerk who shall apply it to the cost of collecting legal financial obligations under RCW 9.94A.760. [2011 1st sp.s. c 40 § 10; 2008 c 231 § 37; 2003 c 379 § 18; 1991 c 104 § 1; 1989 c 252 § 8; 1984 c 209 § 15; 1982 c 207 § 2. Formerly RCW 9.94A.270.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Application—Application of repealers—Effective date—2008 c 231: See notes following RCW 9.94A.701.

Severability—2008 c 231: See note following RCW 9.94A.500.

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.94A.850 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.94A.855 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.94A.860 Sentencing guidelines commission—Membership—Appointments—Terms of office—Expenses and compensation. (1) The sentencing guidelines commission is hereby created, located within the office of financial management. Except as provided in RCW 9.94A.875, the commission shall serve to advise the governor and the legislature as necessary on issues relating to adult and juvenile sentencing. The commission may meet, as necessary, to accomplish these purposes within funds appropriated.

(2) The commission consists of twenty voting members, one of whom the governor shall designate as chairperson. With the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, or his or her designee, subject to confirmation by the senate.

(3) The voting membership consists of the following:

(a) The head of the state agency having general responsibility for adult correction programs, as an ex officio member;

(b) The director of financial management or designee, as an ex officio member;

(c) The chair of the indeterminate sentence review board, as an ex officio member;

(d) The head of the state agency, or the agency head's designee, having responsibility for juvenile corrections programs, as an ex officio member;

(e) Two prosecuting attorneys;

(f) Two attorneys with particular expertise in defense work;

(g) Four persons who are superior court judges;

(h) One person who is the chief law enforcement officer of a county or city;

(i) Four members of the public who are not prosecutors, defense attorneys, judges, or law enforcement officers, one of whom is a victim of crime or a crime victims' advocate;

(j) One person who is an elected official of a county government, other than a prosecuting attorney or sheriff;

(k) One person who is an elected official of a city government;

(l) One person who is an administrator of juvenile court services.

In making the appointments, the governor shall endeavor to assure that the commission membership includes adequate representation and expertise relating to both the adult criminal justice system and the juvenile justice system. In making the appointments, the governor shall seek the recommendations of Washington prosecutors in respect to the prosecuting attorney members, of the Washington state bar association in respect to the defense attorney members, of the association of superior court judges in respect to the members who are judges, of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer, of the Washington state association of counties in respect to the member who is a county official, of the association of Washington cities in respect to the member who is a city official, of the office of crime victims advocacy and other organizations of crime victims in respect to the member who is a victim of crime or a crime victims' advocate, and of the Washington association of juvenile court administrators in respect to the member who is an administrator of juvenile court services.

(4)(a) All voting members of the commission, except ex officio voting members, shall serve terms of three years and until their successors are appointed and confirmed.

(b) The governor shall stagger the terms of the members appointed under subsection (3)(j), (k), and (l) of this section by appointing one of them for a term of one year, one for a term of two years, and one for a term of three years.

(5) The speaker of the house of representatives and the president of the senate may each appoint two nonvoting members to the commission, one from each of the two largest caucuses in each house. The members so appointed shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first.

(6) The members of the commission may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members may be reimbursed by their respective houses as provided under RCW 44.04.120. Except for the reimbursement of travel expenses, members shall not be compensated. [2011 1st sp.s. c 40 § 36; 2001 2nd sp.s. c 12 § 311; 1996 c 232 § 3; 1993 c 11 § 1; 1988 c 157 § 2; 1984 c 287 § 10; 1981 c 137 § 6. Formerly RCW 9.94A.060.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

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

Additional notes found at www.leg.wa.gov

9.94A.863 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.94A.8671 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.94A.8672 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.94A.8673 Sex offender policy board—Membership—Expenses and compensation. (1) Within funds appropriated for this purpose, the sentencing guidelines commission shall establish and maintain a sex offender policy board.

(2)(a) The board shall serve to advise the governor and the legislature as necessary on issues relating to sex offender management.

(b) At such times as the governor or a legislative committee of jurisdiction may request, the sex offender policy board may be convened to:

(i) Undertake projects to assist policymakers in making informed judgments about issues relating to sex offender policy; and

(ii) Conduct case reviews of sex offense incidents to understand performance of Washington's sex offender prevention and response systems.

(3) The sex offender policy board shall consist of thirteen voting members. Unless the member is specifically named in this section, the following organizations shall des-

ignate a person to sit on the board. The voting membership shall consist of the following:

- (a) A representative of the Washington association of sheriffs and police chiefs;
- (b) A representative of the Washington association of prosecuting attorneys;
- (c) A representative of the Washington association of criminal defense lawyers;
- (d) The chair of the indeterminate sentence review board or his or her designee;
- (e) A representative of the Washington association for the treatment of sex abusers;
- (f) The secretary of the department of corrections or his or her designee;
- (g) A representative of the Washington state superior court judges' association;
- (h) The assistant secretary of the juvenile rehabilitation administration or his or her designee;
- (i) The office of crime victims advocacy in the department of commerce;
- (j) A representative of the Washington state association of counties;
- (k) A representative of the association of Washington cities;
- (l) A representative of the Washington association of sexual assault programs; and
- (m) The director of the special commitment center or his or her designee.

(4) The board shall choose its chair by majority vote from among its voting membership. The chair's term shall be two years.

(5) As appropriate, the board shall consult with the criminal justice division in the attorney general's office and the Washington institute for public policy.

(6) Members of the board shall receive no compensation but may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 40 § 37; 2008 c 249 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Captions not law—2008 c 249: "Captions used in this act are not any part of the law." [2008 c 249 § 12.]

9.94A.8674 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.94A.8675 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.94A.8676 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.94A.8677 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.94A.8678 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

9.94A.880 Clemency and pardons board—Membership—Terms—Chair—Bylaws—Travel expenses—Staff.

(1) The clemency and pardons board is established as a board within the office of the governor. The board consists of five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the board shall serve terms of four years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years.

(3) The board shall elect a chair from among its members and shall adopt bylaws governing the operation of the board.

(4) Members of the board shall receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(5) The attorney general shall provide a staff as needed for the operation of the board. [2011 c 336 § 335; 1981 c 137 § 25. Formerly RCW 9.94A.250.]

Additional notes found at www.leg.wa.gov

Chapter 9.95 RCW INDETERMINATE SENTENCES

Sections	
9.95.0002	Transfer of board to department of corrections—Members of board shall exercise independent judgment.
9.95.003	Appointment of board members—Qualifications—Duties of chair—Salaries and travel expenses—Staffing.
9.95.005	Board meetings—Quarters at institutions.
9.95.007	Transaction of board's business in panels—Action by full board.
9.95.009	Board of prison terms and paroles redesignated indeterminate sentence review board—Continuation of functions.
9.95.011	Minimum terms.
9.95.030	Statement to indeterminate sentence review board.
9.95.062	Stay of judgment—When prohibited—Credit for jail time pending appeal.
9.95.063	Conviction upon new trial—Former imprisonment deductible.
9.95.140	Record of parolees—Privacy—Release of sex offender information—Immunity from liability—Cooperation by officials and employees.
9.95.200	Probation by court—Investigation by secretary of corrections.
9.95.204	Misdemeanor probation services—County supervision.
9.95.210	Conditions of probation.
9.95.214	Assessments and intake fees for supervision of misdemeanor probationers.
9.95.280	Return of parole violators from another state—Deputizing out-of-state officers.
9.95.300	Return of parole violators from another state—Contracts to share costs.
9.95.330	Assistance for parolees, work release, and discharged prisoners—Department may accept gifts and make expenditures.

9.95.0002 Transfer of board to department of corrections—Members of board shall exercise independent judgment. (1) The indeterminate sentence review board is transferred to the department of corrections.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written materials in the possession of the indeterminate sentence review board shall be delivered to the custody of the department of corrections. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the indeterminate sentence review board shall be made available to the department of corrections. All funds, credits, or other assets held by the indeterminate sentence review board shall be assigned to the department of corrections.

(b) Any appropriations made to the indeterminate sentence review board shall, on August 24, 2011, be transferred and credited to the department of corrections.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the indeterminate sentence review board are transferred to the jurisdiction of the department of corrections. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of corrections to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the indeterminate sentence review board shall be continued and acted upon by the department of corrections. All existing contracts and obligations shall remain in full force and shall be performed by the department of corrections.

(5) The transfer of the powers, duties, functions, and personnel of the indeterminate sentence review board shall not affect the validity of any act performed before August 24, 2011.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the indeterminate sentence review board assigned to the department of corrections under chapter 40, Laws of 2011 1st sp. sess. whose positions are within an existing bargaining unit description at the department of corrections shall become a part of the existing bargaining unit at the department of corrections and shall be considered an appropriate inclusion or modification of the existing bargaining unit under the provisions of chapter 41.80 RCW.

(8) Notwithstanding any provision of chapter 40, Laws of 2011 1st sp. sess. and despite the transfer of the indeterminate sentence review board to the department of corrections, the members of the indeterminate sentence review board will possess and shall exercise independent judgment when making any decisions concerning offenders. These decisions include, but are not limited to, decisions concerning offenders' release, revocation, reinstatement, or the imposition of conditions of supervision. [2011 1st sp.s. c 40 § 16.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

9.95.003 Appointment of board members—Qualifications—Duties of chair—Salaries and travel expenses—Staffing. (1) The board is created within the department. The board shall consist of a chair and four other members, each of whom shall be appointed by the governor with the consent of the senate. Each member shall hold office for a

term of five years, and until his or her successor is appointed and qualified. The terms shall expire on April 15th of the expiration year. Vacancies in the membership of the board shall be filled by appointment by the governor with the consent of the senate. In the event of the inability of any member to act, the governor shall appoint some competent person to act in his or her stead during the continuance of such inability. The members shall not be removable during their respective terms except for cause determined by the superior court of Thurston county. The governor in appointing the members shall designate one of them to serve as chair at the governor's pleasure. The appointed chair shall serve as a fully participating board member.

(2) The department shall provide administrative and staff support for the board. The secretary may employ a senior administrative officer and such other personnel as may be necessary to assist the board in carrying out its duties.

(3) The members of the board and staff assigned to the board shall not engage in any other business or profession or hold any other public office without the prior approval of the executive ethics board indicating compliance with RCW 42.52.020, 42.52.030, 42.52.040, and 42.52.120; nor shall they, at the time of appointment or employment or during their incumbency, serve as the representative of any political party on an executive committee or other governing body thereof, or as an executive officer or employee of any political committee or association. The members of the board shall each severally receive salaries fixed by the governor in accordance with the provisions of RCW 43.03.040, and in addition shall receive travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 40 § 15; 2011 c 336 § 336; 2007 c 362 § 1; 1997 c 350 § 2; 1986 c 224 § 3; 1975-'76 2nd ex.s. c 34 § 8; 1969 c 98 § 9; 1959 c 32 § 1; 1955 c 340 § 9. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.020.]

Reviser's note: This section was amended by 2011 c 336 § 336 and by 2011 1st sp.s. c 40 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.005 Board meetings—Quarters at institutions. The board shall meet at major state correctional institutions at such times as may be necessary for a full and complete study of the cases of all convicted persons whose durations of confinement are to be determined by it; whose community custody supervision is under the board's authority; or whose applications for parole come before it. Other times and places of meetings may also be fixed by the board.

The superintendents of the different institutions shall provide suitable quarters for the board while in the discharge of their duties. [2011 1st sp.s. c 40 § 17; 2001 2nd sp.s. c 12 § 318; 1986 c 224 § 4; 1959 c 32 § 2; 1955 c 340 § 10. Prior: 1945 c 155 § 1, part; 1935 c 114 § 8, part; Rem. Supp. 1945 § 10249-8, part. Formerly RCW 43.67.030.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.95.007 Transaction of board's business in panels—Action by full board. The board may meet and transact business in panels. Each board panel shall consist of at least two members of the board. In all matters concerning the internal affairs of the board and policy-making decisions, a majority of the full board must concur in such matters. The chair of the board with the consent of a majority of the board may designate any two members to exercise all the powers and duties of the board in connection with any hearing before the board. If the two members so designated cannot unanimously agree as to the disposition of the hearing assigned to them, such hearing shall be reheard by the full board. All actions of the full board shall be by concurrence of a majority of the sitting board members. [2011 1st sp.s. c 40 § 18; 2011 c 336 § 337; 1986 c 224 § 5; 1975-'76 2nd ex.s. c 63 § 1; 1959 c 32 § 3. Formerly RCW 43.67.035.]

Reviser's note: This section was amended by 2011 c 336 § 337 and by 2011 1st sp.s. c 40 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.009 Board of prison terms and paroles redesignated indeterminate sentence review board—Continuation of functions. (1) On July 1, 1986, the board of prison terms and paroles shall be redesignated as the indeterminate sentence review board. The board's membership shall be reduced as follows: On July 1, 1986, and on July 1st of each year until 1998, the number of board members shall be reduced in a manner commensurate with the board's remaining workload as determined by the office of financial management based upon its population forecast for the indeterminate sentencing system and in conjunction with the budget process. To meet the statutory obligations of the indeterminate sentence review board, the number of board members shall not be reduced to fewer than three members, although the office of financial management may designate some or all members as part-time members and specify the extent to which they shall be less than full-time members. Any reduction shall take place by the expiration, on that date, of the term or terms having the least time left to serve.

(2) After July 1, 1984, the board shall continue its functions with respect to persons convicted of crimes committed prior to July 1, 1984, and committed to the department of corrections. When making decisions on duration of confinement, including those relating to persons committed under a mandatory life sentence, and parole release under RCW 9.95.100 and 9.95.110, the board shall consider the purposes, standards, and sentencing ranges under chapter 9.94A RCW of the sentencing reform act and the minimum term recommendations of the sentencing judge and prosecuting attorney, and shall attempt to make decisions reasonably consistent with those ranges, standards, purposes, and recommendations: PROVIDED, That the board and its successors shall

give adequate written reasons whenever a minimum term or parole release decision is made which is outside the sentencing ranges under chapter 9.94A RCW of the sentencing reform act. In making such decisions, the board and its successors shall consider the different charging and disposition practices under the indeterminate sentencing system.

(3) Notwithstanding the provisions of subsection (2) of this section, the indeterminate sentence review board shall give public safety considerations the highest priority when making all discretionary decisions on the remaining indeterminate population regarding the ability for parole, parole release, and conditions of parole. [2011 1st sp.s. c 40 § 41; 1990 c 3 § 707; 1989 c 259 § 1; 1986 c 224 § 6; 1985 c 279 § 1; 1982 c 192 § 8; 1981 c 137 § 24.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9.95.011 Minimum terms. (1) When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges under chapter 9.94A RCW of the sentencing reform act, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

(2)(a) Except as provided in (b) of this subsection, not less than ninety days prior to the expiration of the minimum term of a person sentenced under RCW 9.94A.507, for a sex offense committed on or after September 1, 2001, less any time credits permitted by statute, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional five years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

(b) If at the time a person sentenced under RCW 9.94A.507 for a sex offense committed on or after September 1, 2001, arrives at a department of corrections facility, the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival, then no later than one hundred twenty days after the offender's arrival

at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional five years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

(c) In setting a new minimum term, the board may consider the length of time necessary for the offender to complete treatment and programming as well as other factors that relate to the offender's release under RCW 9.95.420. The board's rules shall permit an offender to petition for an earlier review if circumstances change or the board receives new information that would warrant an earlier review. [2011 1st sp.s. c 40 § 40; 2009 c 28 § 21; 2007 c 363 § 1; 2002 c 174 § 2; 2001 2nd sp.s. c 12 § 320; 1993 c 144 § 3; 1986 c 224 § 7.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Effective date—2002 c 174: See note following RCW 9.95.420.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9.95.030 Statement to indeterminate sentence review board. At the time the convicted person is transported to the custody of the department of corrections, the indeterminate sentence review board shall obtain from the sentencing judge and the prosecuting attorney, a statement of all the facts concerning the convicted person's crime and any other information of which they may be possessed relative to him or her, and the sentencing judge and the prosecuting attorney shall furnish the board with such information. The sentencing judge and prosecuting attorney shall indicate to the board, for its guidance, what, in their judgment, should be the duration of the convicted person's imprisonment. [2011 c 336 § 338; 1999 c 143 § 17; 1984 c 114 § 2; 1955 c 133 § 4. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

9.95.062 Stay of judgment—When prohibited—Credit for jail time pending appeal. (1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in a criminal action shall not stay the execution of the judgment of conviction, if the court determines by a preponderance of the evidence that:

(a) The defendant is likely to flee or to pose a danger to the safety of any other person or the community if the judgment is stayed; or

(b) The delay resulting from the stay will unduly diminish the deterrent effect of the punishment; or

(c) A stay of the judgment will cause unreasonable trauma to the victims of the crime or their families; or

(d) The defendant has not undertaken to the extent of the defendant's financial ability to pay the financial obligations

under the judgment or has not posted an adequate performance bond to assure payment.

(2) An appeal by a defendant convicted of one of the following offenses shall not stay execution of the judgment of conviction: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076, and 9A.44.079); child molestation in the first, second, or third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a minor in the first or second degree (RCW 9A.44.093 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW 9A.40.090); human trafficking in the first or second degree (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); any class A or B felony that is a sexually motivated offense as defined in RCW 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal attempt, solicitation, or conspiracy to commit one of those offenses.

(3) In case the defendant has been convicted of a felony, and has been unable to obtain release pending the appeal by posting an appeal bond, cash, adequate security, release on personal recognizance, or any other conditions imposed by the court, the time the defendant has been imprisoned pending the appeal shall be deducted from the term for which the defendant was sentenced, if the judgment is affirmed. [2011 c 111 § 3; 1996 c 275 § 9; 1989 c 276 § 1; 1969 ex.s. c 4 § 1; 1969 c 103 § 1; 1955 c 42 § 2. Prior: 1893 c 61 § 30; RRS § 1745. Formerly RCW 10.73.030, part.]

Finding—1996 c 275: See note following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

9.95.063 Conviction upon new trial—Former imprisonment deductible. If a defendant who has been imprisoned during the pendency of any posttrial proceeding in any state or federal court shall be again convicted upon a new trial resulting from any such proceeding, the period of his or her former imprisonment shall be deducted by the superior court from the period of imprisonment to be fixed on the last verdict of conviction. [2011 c 336 § 339; 1971 ex.s. c 86 § 1; 1971 c 81 § 47; 1955 c 42 § 4. Prior: 1893 c 61 § 34; RRS § 1750. Formerly RCW 10.73.070, part.]

9.95.140 Record of parolees—Privacy—Release of sex offender information—Immunity from liability—Cooperation by officials and employees. (1) The board shall cause a complete record to be kept of every prisoner under the jurisdiction of the board released on parole or community custody. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there will be always immediately available complete information about each such prisoner. Subject to information sharing provisions related to offenders with mental illness and the end of sentence review committee, the board may make rules as to the privacy of such records and their use by others than the board and the department staff assigned to perform board-related duties. Sex offenders convicted of crimes committed before July 1, 1984, who are under the board's jurisdiction shall be subject to the determinations of the end of sentence review committee regarding risk level

and subject to sex offender registration and community notification. The board and the department staff assigned to perform board-related duties shall be immune from liability for the release of information concerning sex offenders as provided in RCW 4.24.550.

The superintendents of state correctional facilities and all officers and employees thereof and all other public officials shall at all times cooperate with the board and furnish to the board and staff assigned to perform board-related duties such information as may be necessary to enable it to perform its functions, and such superintendents and other employees shall at all times give the members of the board and staff assigned to perform board-related duties free access to all prisoners confined in the state correctional facilities.

(2) Offenders sentenced under RCW 9.94A.507 shall be subject to the determinations of the end of sentence review committee regarding risk level and subject to sex offender registration and community notification.

(3) The end of sentence review committee shall make law enforcement notifications for offenders under board jurisdiction on the same basis that it notifies law enforcement regarding offenders sentenced under chapter 9.94A RCW for crimes committed after July 1, 1984. [2011 1st sp.s. c 40 § 19; 2009 c 28 § 29; 2001 2nd sp.s. c 12 § 341; 1992 c 7 § 27; 1990 c 3 § 126; 1955 c 133 § 15. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2009 c 28: See note following RCW 2.24.040.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Washington state patrol identification and criminal history section: RCW 43.43.700 through 43.43.765.

Additional notes found at www.leg.wa.gov

9.95.200 Probation by court—Investigation by secretary of corrections. After conviction by plea or verdict of guilty of any crime, the court upon application or its own motion, may summarily grant or deny probation, or at a subsequent time fixed may hear and determine, in the presence of the defendant, the matter of probation of the defendant, and the conditions of such probation, if granted. The court may, in its discretion, prior to the hearing on the granting of probation, refer the matter to the secretary of corrections or such officers as the secretary may designate for investigation and report to the court at a specified time, upon the circumstances surrounding the crime and concerning the defendant, his or her prior record, and his or her family surroundings and environment. [2011 c 336 § 340; 1981 c 136 § 41; 1979 c 141 § 6; 1967 c 134 § 15; 1957 c 227 § 3. Prior: 1949 c 59 § 1; 1939 c 125 § 1, part; 1935 c 114 § 5; Rem. Supp. 1949 § 10249-5a.]

Rules of court: ER 410.

Suspending sentences: RCW 9.92.060.

Additional notes found at www.leg.wa.gov

9.95.204 Misdemeanant probation services—County supervision. (1) When a superior court places a defendant convicted of a misdemeanor or gross misdemeanor on proba-

tion and orders supervision under RCW 9.92.060 or 9.95.210, the department of corrections has responsibility for supervision of defendants pursuant to RCW 9.94A.501 and 9.94A.5011.

(2) A county legislative authority may assume responsibility for the supervision of defendants within its jurisdiction who have been convicted of a misdemeanor or gross misdemeanor and sentenced to probation by a superior court. If a county legislative authority chooses to assume responsibility for defendants supervised by the department, the assumption of responsibility shall be made by contract with the department of corrections on a biennial basis.

(3) The state of Washington, the department of corrections and its employees, community corrections officers, and volunteers who assist community corrections officers are not liable for any harm caused by the actions of a superior court misdemeanant probationer who is under the supervision of a county. A county, its probation department and employees, probation officers, and volunteers who assist probation officers are not liable for any harm caused by the actions of a superior court misdemeanant probationer who is under the supervision of the department of corrections.

(4) The state of Washington, the department of corrections and its employees, community corrections officers, any county providing supervision services pursuant to this section and its employees, probation officers, and volunteers who assist community corrections officers and probation officers in the superior court misdemeanant probation program are not liable for civil damages resulting from any act or omission in the rendering of superior court misdemeanant probation activities unless the act or omission constitutes gross negligence. For purposes of this section, "volunteers" is defined according to RCW 51.12.035.

(5)(a) If a misdemeanant probationer requests permission to travel or transfer to another state, the assigned probation officer employed or contracted for by the county shall determine whether such request is subject to RCW 9.94A.745, the interstate compact for adult offender supervision. If such request is subject to the compact, the probation officer shall:

(i) Notify the department of corrections of the probationer's request;

(ii) Provide the department of corrections with the supporting documentation it requests for processing an application for transfer;

(iii) Notify the probationer of the fee due to the department of corrections for processing an application under the compact;

(iv) Cease supervision of the probationer while another state supervises the probationer pursuant to the compact;

(v) Resume supervision if the probationer returns to this state before the term of probation expires.

(b) The probationer shall receive credit for time served while being supervised by another state. [2011 1st sp.s. c 40 § 6. Prior: 2005 c 400 § 2; 2005 c 362 § 3; 1996 c 298 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Application—Effective date—2005 c 400: See notes following RCW 9.94A.74504.

Effective date—2005 c 362: See note following RCW 9.94A.501.

9.95.210 Conditions of probation. (1) In granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

(2) In the order granting probation and as a condition thereof, the superior court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. The superior court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required; (d) following consideration of the financial condition of the person subject to possible electronic monitoring, to pay for the costs of electronic monitoring if that monitoring was required by the court as a condition of release from custody or as a condition of probation; (e) to contribute to a county or interlocal drug fund; and (f) to make restitution to a public agency for the costs of an emergency response under RCW 38.52.430, and may require bonds for the faithful observance of any and all conditions imposed in the probation.

(3) The superior court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the superior court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the superior court within one year of imposition of the sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the superior court shall hold a restitution hearing and shall enter a restitution order.

(4) In granting probation, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be pro-

visions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

(5) If the probationer has been ordered to make restitution and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If the superior court has ordered supervision and restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation may be performed by probation officers employed for that purpose by the county legislative authority of the county wherein the court is located.

(6) The provisions of RCW 9.94A.501 and 9.94A.5011 apply to sentences imposed under this section. [2011 1st sp.s. c 40 § 7; 2005 c 362 § 4; 1996 c 298 § 3; 1995 1st sp.s. c 19 § 29; 1995 c 33 § 6; 1993 c 251 § 3; 1992 c 86 § 1; 1987 c 202 § 146; 1984 c 46 § 1; 1983 c 156 § 4; 1982 1st ex.s. c 47 § 10; 1982 1st ex.s. c 8 § 5; 1981 c 136 § 42; 1980 c 19 § 1. Prior: 1979 c 141 § 7; 1979 c 29 § 2; 1969 c 29 § 1; 1967 c 200 § 8; 1967 c 134 § 16; 1957 c 227 § 4; prior: 1949 c 77 § 1; 1939 c 125 § 1, part; Rem. Supp. 1949 § 10249-5b.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Effective date—2011 1st sp.s. c 40 §§ 1-9, 42: See note following RCW 9.94A.501.

Effective date—2005 c 362: See note following RCW 9.94A.501.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Finding—Intent—1993 c 251: See note following RCW 38.52.430.

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

Intent—Reports—1982 1st ex.s. c 8: See note following RCW 7.68.035.

Restitution

alternative to fine: RCW 9A.20.030.

condition to suspending sentence: RCW 9.92.060.

disposition when victim not found or dead: RCW 7.68.290.

Termination of suspended sentence, restoration of civil rights: RCW 9.92.066.

Violations of probation conditions, rearrest, detention: RCW 72.04A.090.

Additional notes found at www.leg.wa.gov

9.95.214 Assessments and intake fees for supervision of misdemeanor probationers. Whenever a defendant convicted of a misdemeanor or gross misdemeanor is placed on probation under RCW 9.92.060 or 9.95.210, and the defendant is supervised by a county probation department, the county probation department may assess and collect from the defendant for the duration of the term of supervision a monthly assessment not to exceed one hundred dollars per month. Whenever a defendant convicted of a misdemeanor or gross misdemeanor is placed on probation under RCW 9.92.060 or 9.95.210, and the defendant is supervised by the department of corrections, the department may collect supervision intake fees pursuant to RCW 9.94A.780. This assessment shall be paid to the agency supervising the defendant

and shall be applied, along with funds appropriated by the legislature, toward the payment or part payment of the cost of supervising the defendant. The county probation department shall suspend such assessment while the defendant is being supervised by another state pursuant to RCW 9.94A.745, the interstate compact for adult offender supervision. [2011 1st sp.s. c 40 § 11; 2005 c 400 § 3; 1996 c 298 § 4; 1995 1st sp.s. c 19 § 32.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Application—Effective date—2005 c 400: See notes following RCW 9.94A.74504.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

9.95.280 Return of parole violators from another state—Deputizing out-of-state officers. The secretary, upon recommendation by the board, may deputize any person (regularly employed by another state) to act as an officer and agent of this state in effecting the return of any person convicted of a crime committed before July 1, 1984, who has violated the terms and conditions of parole or probation as granted by this state. In any matter relating to the return of such a person, any agent so deputized shall have all the powers of a police officer of this state. [2011 1st sp.s. c 40 § 20; 2001 2nd sp.s. c 12 § 344; 1999 c 143 § 31; 1955 c 183 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

9.95.300 Return of parole violators from another state—Contracts to share costs. The secretary, upon recommendation by the board, may enter into contracts with similar officials of any other state or states for the purpose of sharing an equitable portion of the cost of effecting the return of any person who has violated the terms and conditions of parole, probation, or community custody as granted by this state. [2011 1st sp.s. c 40 § 21; 2001 2nd sp.s. c 12 § 346; 1999 c 143 § 32; 1955 c 183 § 3.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

9.95.330 Assistance for parolees, work release, and discharged prisoners—Department may accept gifts and make expenditures. The department of corrections may accept any devise, bequest, gift, grant, or contribution made for the purposes of RCW 9.95.310 through 9.95.370 and the secretary of corrections or his or her designee may make expenditures, or approve expenditures by local parole or probation officers, therefrom for the purposes of RCW 9.95.310 through 9.95.370 in accordance with the rules of the department of corrections. [2011 c 336 § 341; 1981 c 136 § 46; 1971 ex.s. c 31 § 3; 1961 c 217 § 4.]

Additional notes found at www.leg.wa.gov

Chapter 9.96 RCW RESTORATION OF CIVIL RIGHTS

Sections

9.96.010	Restoration of civil rights.
9.96.020	Form of certificate.
9.96.030	Certified copy—Recording and indexing.
9.96.050	Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected.

9.96.010 Restoration of civil rights. Whenever the governor shall grant a pardon to a person convicted of an infamous crime, or whenever the maximum term of imprisonment for which any such person was committed is about to expire or has expired, and such person has not otherwise had his or her civil rights restored, the governor shall have the power, in his or her discretion, to restore to such person his or her civil rights in the manner as in this chapter provided. [2011 c 336 § 342; 1961 c 187 § 2; 1931 c 19 § 1; 1929 c 26 § 2; RRS § 10250.]

9.96.020 Form of certificate. Whenever the governor shall determine to restore his or her civil rights to any person convicted of an infamous crime in any superior court of this state, he or she shall execute and file in the office of the secretary of state an instrument in writing in substantially the following form:

"To the People of the State of Washington
Greeting:

I, the undersigned Governor of the State of Washington, by virtue of the power vested in my office by the constitution and laws of the State of Washington, do by these presents restore to his civil rights forfeited by him (or her) by reason of his (or her) conviction of the crime of (naming it) in the Superior Court for the County of, on to-wit: The day of, 19

Dated the day of, 19

(Signed)
Governor of Washington."

[2011 c 336 § 343; 1931 c 19 § 2; 1929 c 26 § 3; RRS § 10251.]

9.96.030 Certified copy—Recording and indexing. Upon the filing of an instrument restoring civil rights in his or her office, it shall be the duty of the secretary of state to transmit a duly certified copy thereof to the clerk of the superior court named therein, who shall record the same in the journal of the court and index the same in the execution docket of the cause in which the conviction was had. [2011 c 336 § 344; 1931 c 19 § 3; 1929 c 26 § 4; RRS § 10252.]

9.96.050 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected. (1)(a) When an offender on parole has performed all obligations of his or her release, including any and all legal financial obligations, for such time as shall satisfy the indeterminate sentence review board that his or her final release is not incompatible with the best interests of society and the welfare of the paroled individual, the board may make a final order of discharge and issue a certificate of discharge to the offender.

(b) The board retains the jurisdiction to issue a certificate of discharge after the expiration of the offender's or parolee's maximum statutory sentence. If not earlier granted and any and all legal financial obligations have been paid, the board shall issue a final order of discharge three years from the date of parole unless the parolee is on suspended or revoked status at the expiration of the three years.

(c) The discharge, regardless of when issued, shall have the effect of restoring all civil rights not already restored by RCW 29A.08.520, and the certification of discharge shall so state.

(d) This restoration of civil rights shall not restore the right to receive, possess, own, or transport firearms.

(e) The board shall issue a certificate of discharge to the offender in person or by mail to the offender's last known address.

(2) A copy of every signed certificate of discharge for offender sentences under the authority of the department of corrections shall be placed in the department's files.

(3) The discharge provided for in this section shall be considered as a part of the sentence of the convicted person and shall not in any manner be construed as affecting the powers of the governor to pardon any such person. [2011 1st sp.s. c 40 § 22; 2009 c 325 § 4. Prior: 2007 c 363 § 4; 2007 c 171 § 2; 2002 c 16 § 3; 1993 c 140 § 4; 1980 c 75 § 1; 1961 c 187 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—2002 c 16: See note following RCW 9.94A.637.

Chapter 9.98 RCW

PRISONERS—UNTRIED INDICTMENTS, INFORMATIONS, COMPLAINTS

Sections

9.98.010 Disposition of untried indictment, information, complaint—
Procedure—Escape, effect.

9.98.010 Disposition of untried indictment, information, complaint—Procedure—Escape, effect. (1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever during the continuance of the term of imprisonment there is pending in this state any untried indictment, information, or complaint against the prisoner, he or she shall be brought to trial within one hundred twenty days after he or she shall have caused to be delivered to the prosecuting attorney and the superior court of the county in which the indictment, information, or complaint is pending written notice of the place of his or her imprisonment and his or her request for a final disposition to be made of the indictment, information, or complaint: PROVIDED, That for good cause shown in open court, the prisoner or his or her counsel shall have the right to be present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the superintendent having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of

parole eligibility of the prisoner, and any decisions of the indeterminate sentence review board relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) of this section shall be given or sent by the prisoner to the superintendent having custody of him or her, who shall promptly forward it together with the certificate to the appropriate prosecuting attorney and superior court by certified mail, return receipt requested.

(3) The superintendent having custody of the prisoner shall promptly inform him or her in writing of the source and contents of any untried indictment, information, or complaint against him or her concerning which the superintendent has knowledge and of his or her right to make a request for final disposition thereof.

(4) Escape from custody by the prisoner subsequent to his or her execution of the request for final disposition referred to in subsection (1) of this section shall void the request. [2011 c 336 § 345; 1999 c 143 § 33; 1959 c 56 § 1.]

Chapter 9.100 RCW AGREEMENT ON DETAINERS

Sections

9.100.070 Request for temporary custody—Notice to prisoner and governor—Advising prisoner of rights.

9.100.070 Request for temporary custody—Notice to prisoner and governor—Advising prisoner of rights. In order to implement Article IV(a) of the agreement on detainers, and in furtherance of its purposes, the appropriate authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request, notify the prisoner and the governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of said request. The authorities having custody of the prisoner shall also advise him or her in writing of his or her rights to counsel, to make representations to the governor within thirty days, and to contest the legality of his or her delivery. [2011 c 336 § 346; 1967 c 34 § 7.]

Title 9A

WASHINGTON CRIMINAL CODE

Chapters

9A.04 Preliminary article.

9A.08 Principles of liability.

9A.12 Insanity.

9A.16 Defenses.

9A.20 Classification of crimes.

9A.28 Anticipatory offenses.

9A.32 Homicide.

9A.36 Assault—Physical harm.

9A.40 Kidnapping, unlawful imprisonment, and custodial interference.

9A.44 Sex offenses.

9A.46 Harassment.

9A.48 Arson, reckless burning, and malicious mischief.

9A.52 Burglary and trespass.

9A.56 Theft and robbery.

9A.60 Fraud.

9A.64 Family offenses.

- 9A.68 Bribery and corrupt influence.**
9A.72 Perjury and interference with official proceedings.
9A.76 Obstructing governmental operation.
9A.80 Abuse of office.
9A.83 Money laundering.
9A.84 Public disturbance.
9A.88 Indecent exposure—Prostitution.

Chapter 9A.04 RCW
PRELIMINARY ARTICLE

Sections

- 9A.04.050 People capable of committing crimes—Capability of children.
 9A.04.070 Who amenable to criminal statutes.
 9A.04.100 Proof beyond a reasonable doubt.
 9A.04.110 Definitions.

9A.04.050 People capable of committing crimes—Capability of children. Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong. Whenever in legal proceedings it becomes necessary to determine the age of a child, he or she may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his or her examination by one or more physicians, whose opinion shall be competent evidence upon the question of his or her age. [2011 c 336 § 347; 1975 1st ex.s. c 260 § 9A.04.050.]

9A.04.070 Who amenable to criminal statutes. Every person, regardless of whether or not he or she is an inhabitant of this state, may be tried and punished under the laws of this state for an offense committed by him or her therein, except when such offense is cognizable exclusively in the courts of the United States. [2011 c 336 § 348; 1975 1st ex.s. c 260 § 9A.04.070.]

9A.04.100 Proof beyond a reasonable doubt. (1) Every person charged with the commission of a crime is presumed innocent unless proved guilty. No person may be convicted of a crime unless each element of such crime is proved by competent evidence beyond a reasonable doubt.

(2) When a crime has been proven against a person, and there exists a reasonable doubt as to which of two or more degrees he or she is guilty, he or she shall be convicted only of the lowest degree. [2011 c 336 § 349; 1975 1st ex.s. c 260 § 9A.04.100.]

9A.04.110 Definitions. In this title unless a different meaning plainly is required:

- (1) "Acted" includes, where relevant, omitted to act;
 (2) "Actor" includes, where relevant, a person failing to act;
 (3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

(5) "Building," in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale, or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

(9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

(11) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

(12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty;

(13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(15) "Peace officer" means a duly appointed city, county, or state law enforcement officer;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or any-

thing else the primary significance of which is economic gain;

(17) "Person," "he or she," and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

(18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;

(19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(21) "Projectile stun gun" means an electronic device that projects wired probes attached to the device that emit an electrical charge and that is designed and primarily employed to incapacitate a person or animal;

(22) "Property" means anything of value, whether tangible or intangible, real or personal;

(23) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(24) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(25) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

(26) "Strangulation" means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe;

(27) "Suffocation" means to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe;

(28) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his or her health, safety, business, financial condition, or personal relationships;

(29) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(30) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular. [2011 c 336 § 350; 2011 c 166 § 2; 2007 c 79 § 3; 2005 c 458 § 3; 1988 c 158 § 1; 1987 c 324 § 1; 1986 c 257 § 3; 1975 1st ex.s. c 260 § 9A.04.110.]

Reviser's note: This section was amended by 2011 c 166 § 2 and by 2011 c 336 § 350, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—2007 c 79: See note following RCW 9A.36.021.

Additional notes found at www.leg.wa.gov

Chapter 9A.08 RCW PRINCIPLES OF LIABILITY

Sections

- 9A.08.020 Liability for conduct of another—Complicity.
9A.08.030 Corporate and personal liability.

9A.08.020 Liability for conduct of another—Complicity. (1) A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable.

(2) A person is legally accountable for the conduct of another person when:

(a) Acting with the kind of culpability that is sufficient for the commission of the crime, he or she causes an innocent or irresponsible person to engage in such conduct; or

(b) He or she is made accountable for the conduct of such other person by this title or by the law defining the crime; or

(c) He or she is an accomplice of such other person in the commission of the crime.

(3) A person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime, he or she:

(i) Solicits, commands, encourages, or requests such other person to commit it; or

(ii) Aids or agrees to aid such other person in planning or committing it; or

(b) His or her conduct is expressly declared by law to establish his or her complicity.

(4) A person who is legally incapable of committing a particular crime himself or herself may be guilty thereof if it is committed by the conduct of another person for which he

or she is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his or her incapacity.

(5) Unless otherwise provided by this title or by the law defining the crime, a person is not an accomplice in a crime committed by another person if:

(a) He or she is a victim of that crime; or

(b) He or she terminates his or her complicity prior to the commission of the crime, and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.

(6) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his or her complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted. [2011 c 336 § 351; 1975-'76 2nd ex.s. c 38 § 1; 1975 1st ex.s. c 260 § 9A.08.020.]

Additional notes found at www.leg.wa.gov

9A.08.030 Corporate and personal liability. (1) As used in this section:

(a) "Agent" means any director, officer, or employee of a corporation, or any other person who is authorized to act on behalf of the corporation;

(b) "Corporation" includes a joint stock association;

(c) "High managerial agent" means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

(2) A corporation is guilty of an offense when:

(a) The conduct constituting the offense consists of an omission to discharge a specific duty of performance imposed on corporations by law; or

(b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or tolerated by the board of directors or by a high managerial agent acting within the scope of his or her employment and on behalf of the corporation; or

(c) The conduct constituting the offense is engaged in by an agent of the corporation, other than a high managerial agent, while acting within the scope of his or her employment and in behalf of the corporation and (i) the offense is a gross misdemeanor or misdemeanor, or (ii) the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation.

(3) A person is criminally liable for conduct constituting an offense which he or she performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his or her own name or behalf.

(4) Whenever a duty to act is imposed by law upon a corporation, any agent of the corporation who knows he or she has or shares primary responsibility for the discharge of the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were by law imposed directly upon such agent.

(5) Every corporation, whether foreign or domestic, which shall violate any provision of RCW 9A.28.040, shall forfeit every right and franchise to do business in this state. The attorney general shall begin and conduct all actions and proceedings necessary to enforce the provisions of this subsection. [2011 c 336 § 352; 1975 1st ex.s. c 260 § 9A.08.030.]

Chapter 9A.12 RCW

INSANITY

Sections

9A.12.010 Insanity.

9A.12.010 Insanity. To establish the defense of insanity, it must be shown that:

(1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:

(a) He or she was unable to perceive the nature and quality of the act with which he or she is charged; or

(b) He or she was unable to tell right from wrong with reference to the particular act charged.

(2) The defense of insanity must be established by a preponderance of the evidence. [2011 c 336 § 353; 1975 1st ex.s. c 260 § 9A.12.010.]

Chapter 9A.16 RCW

DEFENSES

Sections

9A.16.050 Homicide—By other person—When justifiable.

9A.16.090 Intoxication.

9A.16.050 Homicide—By other person—When justifiable. Homicide is also justifiable when committed either:

(1) In the lawful defense of the slayer, or his or her husband, wife, parent, child, brother, or sister, or of any other person in his or her presence or company, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or

(2) In the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, or upon or in a dwelling, or other place of abode, in which he or she is. [2011 c 336 § 354; 1975 1st ex.s. c 260 § 9A.16.050.]

9A.16.090 Intoxication. No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his or her condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his or her intoxication may be taken into consideration in determining such mental state. [2011 c 336 § 355; 1975 1st ex.s. c 260 § 9A.16.090.]

Chapter 9A.20 RCW
CLASSIFICATION OF CRIMES

Sections

- 9A.20.020 Authorized sentences for crimes committed before July 1, 1984.
9A.20.021 Maximum sentences for crimes committed July 1, 1984, and after.

9A.20.020 Authorized sentences for crimes committed before July 1, 1984. (1) Felony. Every person convicted of a classified felony shall be punished as follows:

(a) For a class A felony, by imprisonment in a state correctional institution for a maximum term fixed by the court of not less than twenty years, or by a fine in an amount fixed by the court of not more than fifty thousand dollars, or by both such imprisonment and fine;

(b) For a class B felony, by imprisonment in a state correctional institution for a maximum term of not more than ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such imprisonment and fine;

(c) For a class C felony, by imprisonment in a state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than ten thousand dollars, or by both such imprisonment and fine.

(2) Gross Misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed prior to July 1, 1984. [2011 c 96 § 12; 1982 c 192 § 9; 1981 c 137 § 37; 1975-'76 2nd ex.s. c 38 § 2; 1975 1st ex.s. c 260 § 9A.20.020.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Penalty assessments in addition to fine or bail forfeiture—Crime victim and witness programs in county: RCW 7.68.035.

Additional notes found at www.leg.wa.gov

9A.20.021 Maximum sentences for crimes committed July 1, 1984, and after. (1) Felony. Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following:

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine;

(b) For a class B felony, by confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine;

[2011 RCW Supp—page 152]

(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such confinement and fine.

(2) Gross misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed on or after July 1, 1984. [2011 c 96 § 13. Prior: 2003 c 288 § 7; 2003 c 53 § 63; 1982 c 192 § 10.]

Findings—Intent—2011 c 96: "The legislature finds that a maximum sentence by a court in the state of Washington for a gross misdemeanor can, under federal law, result in the automatic deportation of a person who has lawfully immigrated to the United States, is a victim of domestic violence or a political refugee, even when all or part of the sentence to total confinement is suspended. The legislature further finds that this is a disproportionate outcome, when compared to a person who has been convicted of certain felonies which, under the state's determinate sentencing law, must be sentenced to less than one year and, hence, either have no impact on that person's residency status or will provide that person an opportunity to be heard in immigration proceedings where the court will determine whether deportation is appropriate. Therefore, it is the intent of the legislature to cure this inequity by reducing the maximum sentence for a gross misdemeanor by one day." [2011 c 96 § 1.]

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

Penalty assessments in addition to fine or bail forfeiture—Crime victim and witness programs in county: RCW 7.68.035.

Chapter 9A.28 RCW
ANTICIPATORY OFFENSES

Sections

- 9A.28.030 Criminal solicitation.

9A.28.030 Criminal solicitation. (1) A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he or she offers to give or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.

(2) Criminal solicitation shall be punished in the same manner as criminal attempt under RCW 9A.28.020. [2011 c 336 § 356; 1975 1st ex.s. c 260 § 9A.28.030.]

Chapter 9A.32 RCW
HOMICIDE

Sections

- 9A.32.060 Manslaughter in the first degree.
9A.32.070 Manslaughter in the second degree.

9A.32.060 Manslaughter in the first degree. (1) A person is guilty of manslaughter in the first degree when:

(a) He or she recklessly causes the death of another person; or

(b) He or she intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child.

(2) Manslaughter in the first degree is a class A felony. [2011 c 336 § 357; 1997 c 365 § 5; 1975 1st ex.s. c 260 § 9A.32.060.]

9A.32.070 Manslaughter in the second degree. (1) A person is guilty of manslaughter in the second degree when, with criminal negligence, he or she causes the death of another person.

(2) Manslaughter in the second degree is a class B felony. [2011 c 336 § 358; 1997 c 365 § 6; 1975 1st ex.s. c 260 § 9A.32.070.]

Chapter 9A.36 RCW ASSAULT—PHYSICAL HARM

Sections

9A.36.021	Assault in the second degree.
9A.36.031	Assault in the third degree.
9A.36.060	Promoting a suicide attempt.
9A.36.070	Coercion.
9A.36.090	Threats against governor or family.

9A.36.021 Assault in the second degree. (1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm; or

(b) Intentionally and unlawfully causes substantial bodily harm to an unborn quick child by intentionally and unlawfully inflicting any injury upon the mother of such child; or

(c) Assaults another with a deadly weapon; or

(d) With intent to inflict bodily harm, administers to or causes to be taken by another, poison or any other destructive or noxious substance; or

(e) With intent to commit a felony, assaults another; or

(f) Knowingly inflicts bodily harm which by design causes such pain or agony as to be the equivalent of that produced by torture; or

(g) Assaults another by strangulation or suffocation.

(2)(a) Except as provided in (b) of this subsection, assault in the second degree is a class B felony.

(b) Assault in the second degree with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135 is a class A felony. [2011 c 166 § 1; 2007 c 79 § 2; 2003 c 53 § 64; 2001 2nd sp.s. c 12 § 355; 1997 c 196 § 2. Prior: 1988 c 266 § 2; 1988 c 206 § 916; 1988 c 158 § 2; 1987 c 324 § 2; 1986 c 257 § 5.]

Finding—2007 c 79: "The legislature finds that assault by strangulation may result in immobilization of a victim, may cause a loss of consciousness, injury, or even death, and has been a factor in a significant number of domestic violence related assaults and fatalities. While not limited to acts of assault against an intimate partner, assault by strangulation is often knowingly inflicted upon an intimate partner with the intent to commit physical injury, or substantial or great bodily harm. Strangulation is one of the most lethal forms of domestic violence. The particular cruelty of this offense and

its potential effects upon a victim both physically and psychologically, merit its categorization as a ranked felony offense under chapter 9A.36 RCW." [2007 c 79 § 1.]

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

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Additional notes found at www.leg.wa.gov

9A.36.031 Assault in the third degree. (1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a peace officer with a projectile stun gun; or

(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter 18.79 RCW; "physician" means a person licensed under chapter 18.57 or 18.71 RCW; and "health care provider" means a person certified under chapter 18.71 or 18.73 RCW who performs emergency medical services or a person regulated under Title 18 RCW and employed by, or contracting with, a hospital licensed under chapter 70.41 RCW; or

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any

other employee, regardless of title, who is engaged in equivalent functions.

(2) Assault in the third degree is a class C felony. [2011 c 336 § 359; 2011 c 238 § 1; 2005 c 458 § 1; 1999 c 328 § 1; 1998 c 94 § 1; 1997 c 172 § 1; 1996 c 266 § 1; 1990 c 236 § 1; 1989 c 169 § 1; 1988 c 158 § 3; 1986 c 257 § 6.]

Reviser's note: This section was amended by 2011 c 238 § 1 and by 2011 c 336 § 359, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Additional notes found at www.leg.wa.gov

9A.36.060 Promoting a suicide attempt. (1) A person is guilty of promoting a suicide attempt when he or she knowingly causes or aids another person to attempt suicide.

(2) Promoting a suicide attempt is a class C felony. [2011 c 336 § 360; 1975 1st ex.s. c 260 § 9A.36.060.]

9A.36.070 Coercion. (1) A person is guilty of coercion if by use of a threat he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in *RCW 9A.04.110(27) (a), (b), or (c).

(3) Coercion is a gross misdemeanor. [2011 c 336 § 361; 1975 1st ex.s. c 260 § 9A.36.070.]

***Reviser's note:** RCW 9A.04.110 was amended by 2011 c 166 § 2, changing subsection (27) to subsection (28).

9A.36.090 Threats against governor or family. (1) Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of or to inflict bodily harm upon the governor of the state or his or her immediate family, the governor-elect, the lieutenant governor, other officer next in the order of succession to the office of governor of the state, or the lieutenant governor-elect, or knowingly and willfully otherwise makes any such threat against the governor, governor-elect, lieutenant governor, other officer next in the order of succession to the office of governor, or lieutenant governor-elect, shall be guilty of a class C felony.

(2) As used in this section, the term "governor-elect" and "lieutenant governor-elect" means such persons as are the successful candidates for the offices of governor and lieutenant governor, respectively, as ascertained from the results of the general election. As used in this section, the phrase "other officer next in the order of succession to the office of governor" means the person other than the lieutenant governor next in order of succession to the office of governor under Article 3, section 10 of the state Constitution.

(3) The Washington state patrol may investigate for violations of this section. [2011 c 336 § 362; 1982 c 185 § 1.]

Reviser's note: 1982 c 185 § 2 directed that this section constitute a new chapter in Title 9 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 9A.36 RCW.

Chapter 9A.40 RCW

KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL INTERFERENCE

Sections

9A.40.010	Definitions.
9A.40.020	Kidnapping in the first degree.
9A.40.040	Unlawful imprisonment.
9A.40.100	Trafficking.

9A.40.010 Definitions. The following definitions apply in this chapter:

(1) "Abduct" means to restrain a person by either (a) secreting or holding him or her in a place where he or she is not likely to be found, or (b) using or threatening to use deadly force.

(2) "Commercial sex act" means any act of sexual contact or sexual intercourse for which something of value is given or received.

(3) "Forced labor" means knowingly providing or obtaining labor or services of a person by: (a) Threats of serious harm to, or physical restraint against, that person or another person; or (b) means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.

(4) "Involuntary servitude" means a condition of servitude in which the victim was forced to work by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or legal process. For the purposes of this subsection, "coercion" has the same meaning as provided in RCW 9A.36.070.

(5) "Relative" means an ancestor, descendant, or sibling, including a relative of the same degree through marriage or adoption, or a spouse.

(6) "Restrain" means to restrict a person's movements without consent and without legal authority in a manner which interferes substantially with his or her liberty. Restraint is "without consent" if it is accomplished by (a) physical force, intimidation, or deception, or (b) any means including acquiescence of the victim, if he or she is a child less than sixteen years old or an incompetent person and if the parent, guardian, or other person or institution having lawful control or custody of him or her has not acquiesced.

(7) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or a commercial sex act in order to avoid incurring that harm. [2011 c 336 § 363; 2011 c 111 § 2; 1975 1st ex.s. c 260 § 9A.40.010.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2011 c 111 § 2 and by 2011 c 336 § 363, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

9A.40.020 Kidnapping in the first degree. (1) A person is guilty of kidnapping in the first degree if he or she intentionally abducts another person with intent:

- (a) To hold him or her for ransom or reward, or as a shield or hostage; or
- (b) To facilitate commission of any felony or flight thereafter; or
- (c) To inflict bodily injury on him or her; or
- (d) To inflict extreme mental distress on him, her, or a third person; or
- (e) To interfere with the performance of any governmental function.

(2) Kidnapping in the first degree is a class A felony. [2011 c 336 § 364; 1975 1st ex.s. c 260 § 9A.40.020.]

9A.40.040 Unlawful imprisonment. (1) A person is guilty of unlawful imprisonment if he or she knowingly restrains another person.

(2) Unlawful imprisonment is a class C felony. [2011 c 336 § 365; 1975 1st ex.s. c 260 § 9A.40.040.]

9A.40.100 Trafficking. (1)(a) A person is guilty of trafficking in the first degree when:

(i) Such person:

(A) Recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, or a commercial sex act; or

(B) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i)(A) of this subsection; and

(ii) The acts or venture set forth in (a)(i) of this subsection:

(A) Involve committing or attempting to commit kidnapping;

(B) Involve a finding of sexual motivation under RCW 9.94A.835;

(C) Involve the illegal harvesting or sale of human organs; or

(D) Result in a death.

(b) Trafficking in the first degree is a class A felony.

(2)(a) A person is guilty of trafficking in the second degree when such person:

(i) Recruits, harbors, transports, transfers, provides, obtains, or receives by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, or a commercial sex act; or

(ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

(b) Trafficking in the second degree is a class A felony. [2011 c 111 § 1; 2003 c 267 § 1.]

- 9A.44.130 Registration of sex offenders and kidnapping offenders—Procedures—Definition—Penalties.
- 9A.44.132 Failure to register as sex offender or kidnapping offender.
- 9A.44.138 Attendance, employment of registered sex offenders and kidnapping offenders at institutions of higher education—Notice to school districts, principal, department of public safety at institution—Confidentiality.
- 9A.44.141 Investigation—End of duty to register—Removal from registry—Civil liability.
- 9A.44.142 Relief from duty to register—Petition—Exceptions.
- 9A.44.143 Relief from duty to register for sex offense or kidnapping offense committed when offender was a juvenile—Petition—Exception.

9A.44.128 Definitions applicable to RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330. For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Conviction" means any adult conviction or juvenile adjudication for a sex offense or kidnapping offense.

(3) "Disqualifying offense" means a conviction for: Any offense that is a felony; a sex offense as defined in this section; a crime against children or persons as defined in RCW 43.43.830(5) and 9.94A.411(2)(a); an offense with a domestic violence designation as provided in RCW 10.99.020; permitting the commercial sexual abuse of a minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88 RCW.

(4) "Employed" or "carries on a vocation" means employment that is full time or part time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(5) "Fixed residence" means a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter. A shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.

(6) "In the community" means residing outside of confinement or incarceration for a disqualifying offense.

(7) "Institution of higher education" means any public or private institution dedicated to postsecondary education, including any college, university, community college, trade, or professional school.

(8) "Kidnapping offense" means:

(a) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as

Chapter 9A.44 RCW SEX OFFENSES

Sections

9A.44.128 Definitions applicable to RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330.

defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent;

(b) Any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection; and

(c) Any federal or out-of-state conviction for: An offense for which the person would be required to register as a kidnapping offender if residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a kidnapping offense under this subsection.

(9) "Lacks a fixed residence" means the person does not have a living situation that meets the definition of a fixed residence and includes, but is not limited to, a shelter program designed to provide temporary living accommodations for the homeless, an outdoor sleeping location, or locations where the person does not have permission to stay.

(10) "Sex offense" means:

(a) Any offense defined as a sex offense by RCW 9.94A.030;

(b) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(c) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(d) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection;

(e) Any out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a sex offense under this subsection;

(f) Any federal conviction classified as a sex offense under 42 U.S.C. Sec. 16911 (SORNA);

(g) Any military conviction for a sex offense. This includes sex offenses under the uniform code of military justice, as specified by the United States secretary of defense;

(h) Any conviction in a foreign country for a sex offense if it was obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established pursuant to 42 U.S.C. Sec. 16912.

(11) "School" means a public or private school regulated under Title 28A RCW or chapter 72.40 RCW.

(12) "Student" means a person who is enrolled, on a full-time or part-time basis, in any school or institution of higher education. [2011 c 337 § 2; 2010 c 267 § 1.]

Application—2010 c 267: "The provisions of this act apply to persons convicted before, on, or after June 10, 2010." [2010 c 267 § 15.]

9A.44.130 Registration of sex offenders and kidnapping offenders—Procedures—Definition—Penalties.

(1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county

sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. When a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

(b) Any adult or juvenile who is required to register under (a) of this subsection must give notice to the county sheriff of the county with whom the person is registered within three business days:

(i) Prior to arriving at a school or institution of higher education to attend classes;

(ii) Prior to starting work at an institution of higher education; or

(iii) After any termination of enrollment or employment at a school or institution of higher education.

(2)(a) A person required to register under this section must provide the following information when registering: (i) Name and any aliases used; (ii) complete and accurate residential address or, if the person lacks a fixed residence, where he or she plans to stay; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) social security number; (viii) photograph; and (ix) fingerprints.

(b) A person may be required to update any of the information required in this subsection in conjunction with any address verification conducted by the county sheriff or as part of any notice required by this section.

(c) A photograph or copy of an individual's fingerprints may be taken at any time to update an individual's file.

(3)(a) Offenders shall register with the county sheriff within the following deadlines:

(i) **OFFENDERS IN CUSTODY.** (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within three business days from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the

agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) **OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION.** Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence.

(iii) **OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within three business days from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (3)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation.

(iv) **OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register within three business days of being sentenced.

(v) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within three business days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes for offenses committed before, on, or after February 28, 1990, or Washington state for offenses committed before, on, or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed before, on, or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within three business days of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within three business days from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within three business days of receiving notice of this registration requirement.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and

remains within a new county for twenty-four hours is required to register with the county sheriff not more than three business days after entering the county and provide the information required in subsection (2)(a) of this section.

(viii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) **OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE.** Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of RCW 9A.44.132, or arraignment on charges for a violation of RCW 9A.44.132, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under RCW 9A.44.132 who asserts as a defense the lack of notice of the duty to register shall register within three business days following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (3)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(4)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address to the county sheriff within three business days of moving.

(b) If any person required to register pursuant to this section moves to a new county, the person must register with that county sheriff within three business days of moving. Within three business days, the person must also provide, by certified mail, with return receipt requested or in person, signed written notice of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency

designated by the new state as the state's offender registration agency.

(5)(a) Any person required to register under this section who lacks a fixed residence shall provide signed written notice to the sheriff of the county where he or she last registered within three business days after ceasing to have a fixed residence. The notice shall include the information required by subsection (2)(a) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The person must keep an accurate accounting of where he or she stays during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within three business days of ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (3)(a)(vii) or (viii) and (5) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(6) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within three business days of the entry of the order.

(7) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a peace officer, including a county sheriff, or law enforcement agency, for failing to release information authorized under this section. [2011 c 337 § 3. Prior: 2010 c 267 § 2; 2010 c 265 § 1; 2008 c 230 § 1; prior: 2006 c 129 § 2; (2006 c 129 § 1 expired September 1, 2006); 2006 c 128 § 2; (2006 c 128 § 1 expired September 1, 2006); 2006 c 127 § 2; 2006 c 126 § 2; (2006 c 126 § 1 expired September 1, 2006); 2005 c 380 § 1; prior: 2003 c 215 § 1; 2003 c 53 § 68; 2002 c 31 § 1; prior: 2001 c 169 §

1; 2001 c 95 § 2; 2000 c 91 § 2; prior: 1999 sp.s. c 6 § 2; 1999 c 352 § 9; prior: 1998 c 220 § 1; 1998 c 139 § 1; prior: 1997 c 340 § 3; 1997 c 113 § 3; 1996 c 275 § 11; prior: 1995 c 268 § 3; 1995 c 248 § 1; 1995 c 195 § 1; 1994 c 84 § 2; 1991 c 274 § 2; 1990 c 3 § 402.]

Application—2010 c 267: See note following RCW 9A.44.128.

Delayed effective date—2008 c 230 §§ 1-3: "Sections 1 through 3 of this act take effect ninety days after adjournment sine die of the 2010 legislative session." [2008 c 230 § 5.]

Effective date—2006 c 129 § 2: "Section 2 of this act takes effect September 1, 2006." [2006 c 129 § 4.]

Expiration date—2006 c 129 § 1: "Section 1 of this act expires September 1, 2006." [2006 c 129 § 3.]

Effective date—2006 c 128 § 2: "Section 2 of this act takes effect September 1, 2006." [2006 c 128 § 8.]

Expiration date—2006 c 128 § 1: "Section 1 of this act expires September 1, 2006." [2006 c 128 § 7.]

Severability—2006 c 127: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 127 § 1.]

Effective date—2006 c 127: "This act takes effect September 1, 2006." [2006 c 127 § 3.]

Effective date—2006 c 126 § 2: "Section 2 of this act takes effect September 1, 2006." [2006 c 126 § 10.]

Expiration date—2006 c 126 § 1: "Section 1 of this act expires September 1, 2006." [2006 c 126 § 8.]

Effective date—2006 c 126 §§ 1 and 3-7: "Sections 1 and 3 through 7 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 20, 2006]." [2006 c 126 § 9.]

Effective date—2005 c 380: "This act takes effect September 1, 2006." [2005 c 380 § 4.]

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

Application—2002 c 31: "This act applies to all persons convicted of communication with a minor either on, before, or after July 1, 2001, unless otherwise relieved of the duty to register under RCW 9A.44.140." [2002 c 31 § 2.]

Severability—2002 c 31: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 31 § 3.]

Effective date—2002 c 31: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2002]." [2002 c 31 § 4.]

Effective date—2001 c 95: See note following RCW 9.94A.030.

Intent—1999 sp.s. c 6: "It is the intent of this act to revise the law on registration of sex and kidnapping offenders in response to the case of *State v. Pickett*, Docket number 41562-0-1. The legislature intends that all sex and kidnapping offenders whose history requires them to register shall do so regardless of whether the person has a fixed residence. The lack of a residential address is not to be construed to preclude registration as a sex or kidnapping offender. The legislature intends that persons who lack a residential address shall have an affirmative duty to report to the appropriate county sheriff, based on the level of risk of offending." [1999 sp.s. c 6 § 1.]

Findings—1997 c 113: See note following RCW 4.24.550.

Finding—1996 c 275: See note following RCW 9.94A.505.

Purpose—1995 c 268: See note following RCW 9.94A.030.

Intent—1994 c 84: "This act is intended to clarify existing law and is not intended to reflect a substantive change in the law." [1994 c 84 § 1.]

Finding and intent—1991 c 274: "The legislature finds that sex offender registration has assisted law enforcement agencies in protecting their communities. This act is intended to clarify and amend the deadlines for sex offenders to register. This act's clarification or amendment of RCW

9A.44.130 does not relieve the obligation of sex offenders to comply with the registration requirements of RCW 9A.44.130 as that statute exists before July 28, 1991." [1991 c 274 § 1.]

Finding—Policy—1990 c 3 § 402: "The legislature finds that sex offenders often pose a high risk of reoffense, and that law enforcement's efforts to protect their communities, conduct investigations, and quickly apprehend offenders who commit sex offenses, are impaired by the lack of information available to law enforcement agencies about convicted sex offenders who live within the law enforcement agency's jurisdiction. Therefore, this state's policy is to assist local law enforcement agencies' efforts to protect their communities by regulating sex offenders by requiring sex offenders to register with local law enforcement agencies as provided in RCW 9A.44.130." [1990 c 3 § 401.]

Additional notes found at www.leg.wa.gov

9A.44.132 Failure to register as sex offender or kidnapping offender. (1) A person commits the crime of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a felony sex offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(a) The failure to register as a sex offender pursuant to this subsection is a class C felony if:

(i) It is the person's first conviction for a felony failure to register; or

(ii) The person has previously been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state.

(b) If a person has been convicted of a felony failure to register as a sex offender in this state or pursuant to the laws of another state on two or more prior occasions, the failure to register under this subsection is a class B felony.

(2) A person is guilty of failure to register as a sex offender if the person has a duty to register under RCW 9A.44.130 for a sex offense other than a felony and knowingly fails to comply with any of the requirements of RCW 9A.44.130. The failure to register as a sex offender under this subsection is a gross misdemeanor.

(3) A person commits the crime of failure to register as a kidnapping offender if the person has a duty to register under RCW 9A.44.130 for a kidnapping offense and knowingly fails to comply with any of the requirements of RCW 9A.44.130.

(a) If the person has a duty to register for a felony kidnapping offense, the failure to register as a kidnapping offender is a class C felony.

(b) If the person has a duty to register for a kidnapping offense other than a felony, the failure to register as a kidnapping offender is a gross misdemeanor.

(4) Unless relieved of the duty to register pursuant to RCW 9A.44.141 and 9A.44.142, a violation of this section is an ongoing offense for purposes of the statute of limitations under RCW 9A.04.080. [2011 c 337 § 5; 2010 c 267 § 3.]

Application—2010 c 267: See note following RCW 9A.44.128.

9A.44.138 Attendance, employment of registered sex offenders and kidnapping offenders at institutions of higher education—Notice to school districts, principal, department of public safety at institution—Confidentiality. (1) Upon receiving notice from a registered person pursuant to RCW 9A.44.130 that the person will be attending a school or institution of higher education or will be employed with an institution of higher education, the sheriff must

promptly notify the school district and the school principal or institution's department of public safety and shall provide that school or department with the person's: (a) Name and any aliases used; (b) complete residential address; (c) date and place of birth; (d) place of employment; (e) crime for which convicted; (f) date and place of conviction; (g) social security number; (h) photograph; and (i) risk level classification.

(2) A principal or department receiving notice under this subsection must disclose the information received from the sheriff as follows:

(a) If the student is classified as a risk level II or III, the principal shall provide the information received to every teacher of the student and to any other personnel who, in the judgment of the principal, supervises the student or for security purposes should be aware of the student's record;

(b) If the student is classified as a risk level I, the principal or department shall provide the information received only to personnel who, in the judgment of the principal or department, for security purposes should be aware of the student's record.

(3) The sheriff shall notify the applicable school district and school principal or institution's department of public safety whenever a student's risk level classification is changed or the sheriff is notified of a change in the student's address.

(4) Any information received by school or institution personnel under this subsection is confidential and may not be further disseminated except as provided in RCW 28A.225.330, other statutes or case law, and the family and educational and privacy rights act of 1994, 20 U.S.C. Sec. 1232g et seq. [2011 c 337 § 4.]

9A.44.141 Investigation—End of duty to register—Removal from registry—Civil liability. (1) Upon the request of a person who is listed in the Washington state patrol central registry of sex offenders and kidnapping offenders, the county sheriff shall investigate whether a person's duty to register has ended by operation of law pursuant to RCW 9A.44.140.

(a) Using available records, the county sheriff shall verify that the offender has spent the requisite time in the community and has not been convicted of a disqualifying offense.

(b) If the county sheriff determines the person's duty to register has ended by operation of law, the county sheriff shall request the Washington state patrol remove the person's name from the central registry.

(2) Nothing in this subsection prevents a county sheriff from investigating, upon his or her own initiative, whether a person's duty to register has ended by operation of law pursuant to RCW 9A.44.140.

(3)(a) A person who is listed in the central registry as the result of a federal or out-of-state conviction may request the county sheriff to investigate whether the person should be removed from the registry if:

(i) A court in the person's state of conviction has made an individualized determination that the person should not be required to register; and

(ii) The person provides proof of relief from registration to the county sheriff.

(b) If the county sheriff determines the person has been relieved of the duty to register in his or her state of conviction, the county sheriff shall request the Washington state patrol remove the person's name from the central registry.

(4) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for removing or requesting the removal of a person from the central registry of sex offenders and kidnapping offenders or the failure to remove or request removal of a person within the time frames provided in RCW 9A.44.140. [2011 c 337 § 6; 2010 c 267 § 5.]

Application—2010 c 267: See note following RCW 9A.44.128.

9A.44.142 Relief from duty to register—Petition—Exceptions. (1) A person who is required to register under RCW 9A.44.130 may petition the superior court to be relieved of the duty to register:

(a) If the person has a duty to register for a sex offense or kidnapping offense committed when the offender was a juvenile, regardless of whether the conviction was in this state, as provided in RCW 9A.44.143;

(b) If the person is required to register for a conviction in this state and is not prohibited from petitioning for relief from registration under subsection (2) of this section, when the person has spent ten consecutive years in the community without being convicted of a disqualifying offense during that time period; or

(c) If the person is required to register for a federal or out-of-state conviction, when the person has spent fifteen consecutive years in the community without being convicted of a disqualifying offense during that time period.

(2)(a) A person may not petition for relief from registration if the person has been:

(i) Determined to be a sexually violent predator as defined in RCW 71.09.020;

(ii) Convicted as an adult of a sex offense or kidnapping offense that is a class A felony and that was committed with forcible compulsion on or after June 8, 2000; or

(iii) Until July 1, 2012, convicted of one aggravated offense or more than one sexually violent offense, as defined in subsection (5) of this section, and the offense or offenses were committed on or after March 12, 2002. After July 1, 2012, this subsection (2)(a)(iii) shall have no further force and effect.

(b) Any person who may not be relieved of the duty to register may petition the court to be exempted from any community notification requirements that the person may be subject to fifteen years after the later of the entry of the judgment and sentence or the last date of release from confinement, including full-time residential treatment, pursuant to the conviction, if the person has spent the time in the community without being convicted of a disqualifying offense.

(3) A petition for relief from registration or exemption from notification under this section shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register or, in the case of convictions in other states, a foreign country, or a federal or military court, to the court in the county where the person is reg-

istered at the time the petition is sought. The prosecuting attorney of the county shall be named and served as the respondent in any such petition.

(4)(a) The court may relieve a petitioner of the duty to register only if the petitioner shows by clear and convincing evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(b) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the registry, the following factors are provided as guidance to assist the court in making its determination:

(i) The nature of the registrable offense committed including the number of victims and the length of the offense history;

(ii) Any subsequent criminal history;

(iii) The petitioner's compliance with supervision requirements;

(iv) The length of time since the charged incident(s) occurred;

(v) Any input from community corrections officers, law enforcement, or treatment providers;

(vi) Participation in sex offender treatment;

(vii) Participation in other treatment and rehabilitative programs;

(viii) The offender's stability in employment and housing;

(ix) The offender's community and personal support system;

(x) Any risk assessments or evaluations prepared by a qualified professional;

(xi) Any updated polygraph examination;

(xii) Any input of the victim;

(xiii) Any other factors the court may consider relevant.

(5)(a) A person who has been convicted of an aggravated offense, or has been convicted of one or more prior sexually violent offenses or criminal offenses against a victim who is a minor, as defined in (b) of this subsection:

(i) Until July 1, 2012, may not be relieved of the duty to register;

(ii) After July 1, 2012, may petition the court to be relieved of the duty to register as provided in this section;

(iii) This provision shall apply to convictions for crimes committed on or after July 22, 2001.

(b) Unless the context clearly requires otherwise, the following definitions apply only to the federal lifetime registration requirements under this subsection:

(i) "Aggravated offense" means an adult conviction that meets the definition of 18 U.S.C. Sec. 2241, which is limited to the following:

(A) Any sex offense involving sexual intercourse or sexual contact where the victim is under twelve years of age;

(B) RCW 9A.44.040 (rape in the first degree), RCW 9A.44.073 (rape of a child in the first degree), or RCW 9A.44.083 (child molestation in the first degree);

(C) Any of the following offenses when committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct: RCW 9A.44.050 (rape in the second degree),

RCW 9A.44.100 (indecent liberties), RCW 9A.44.160 (custodial sexual misconduct in the first degree), RCW 9A.64.020 (incest), or RCW 9.68A.040 (sexual exploitation of a minor);

(D) Any of the following offenses when committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct, if the victim is twelve years of age or over but under sixteen years of age and the offender is eighteen years of age or over and is more than forty-eight months older than the victim: RCW 9A.44.076 (rape of a child in the second degree), RCW 9A.44.079 (rape of a child in the third degree), RCW 9A.44.086 (child molestation in the second degree), or RCW 9A.44.089 (child molestation in the third degree);

(E) A felony with a finding of sexual motivation under RCW 9.94A.835 where the victim is under twelve years of age or that is committed by forcible compulsion or by the offender administering, by threat or force or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that person to appraise or control conduct;

(F) An offense that is, under chapter 9A.28 RCW, an attempt or solicitation to commit such an offense; or

(G) An offense defined by federal law or the laws of another state that is equivalent to the offenses listed in (b)(i)(A) through (F) of this subsection.

(ii) "Sexually violent offense" means an adult conviction that meets the definition of 42 U.S.C. Sec. 14071(a)(1)(A), which is limited to the following:

(A) An aggravated offense;

(B) An offense that is not an aggravated offense but meets the definition of 18 U.S.C. Sec. 2242, which is limited to RCW 9A.44.050(1) (b) through (f) (rape in the second degree) and RCW 9A.44.100(1) (b) through (f) (indecent liberties);

(C) A felony with a finding of sexual motivation under RCW 9.94A.835 where the victim is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, the conduct;

(D) An offense that is, under chapter 9A.28 RCW, an attempt or solicitation to commit such an offense; or

(E) An offense defined by federal law or the laws of another state that is equivalent to the offenses listed in (b)(ii)(A) through (D) of this subsection.

(iii) "Criminal offense against a victim who is a minor" means, in addition to any aggravated offense or sexually violent offense where the victim was under eighteen years of age, an adult conviction for the following offenses where the victim is under eighteen years of age:

(A) RCW 9A.44.060 (rape in the third degree), RCW 9A.44.076 (rape of a child in the second degree), RCW 9A.44.079 (rape of a child in the third degree), RCW 9A.44.086 (child molestation in the second degree), RCW 9A.44.089 (child molestation in the third degree), RCW 9A.44.093 (sexual misconduct with a minor in the first degree), RCW 9A.44.096 (sexual misconduct with a minor in the second degree), RCW 9A.44.160 (custodial sexual misconduct in the first degree), RCW 9A.64.020 (incest), RCW

9.68A.040 (sexual exploitation of a minor), RCW 9.68A.090 (communication with a minor for immoral purposes), or RCW 9.68A.100 (commercial sexual abuse of a minor);

(B) RCW 9A.40.020 (kidnapping in the first degree), RCW 9A.40.030 (kidnapping in the second degree), or RCW 9A.40.040 (unlawful imprisonment), where the victim is a minor and the offender is not the minor's parent;

(C) A felony with a finding of sexual motivation under RCW 9.94A.835 where the victim is a minor;

(D) An offense that is, under chapter 9A.28 RCW, an attempt or solicitation to commit such an offense; or

(E) An offense defined by federal law or the laws of another state that is equivalent to the offenses listed in (b)(iii)(A) through (D) of this subsection. [2011 c 337 § 7; 2010 c 267 § 6.]

Application—2010 c 267: See note following RCW 9A.44.128.

9A.44.143 Relief from duty to register for sex offense or kidnapping offense committed when offender was a juvenile—Petition—Exception. (1) An offender having a duty to register under RCW 9A.44.130 for a sex offense or kidnapping offense committed when the offender was a juvenile may petition the superior court to be relieved of that duty as provided in this section.

(2) For class A sex offenses or kidnapping offenses committed when the petitioner was fifteen years of age or older, the court may relieve the petitioner of the duty to register if:

(a) At least sixty months have passed since the petitioner's adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses;

(b) The petitioner has not been adjudicated or convicted of a violation of RCW 9A.44.132 (failure to register) during the sixty months prior to filing the petition; and

(c) The petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(3) For all other sex offenses or kidnapping offenses committed by a juvenile not included in subsection (2) of this section, the court may relieve the petitioner of the duty to register if:

(a) At least twenty-four months have passed since the petitioner's adjudication and completion of any term of confinement for the offense giving rise to the duty to register and the petitioner has not been adjudicated or convicted of any additional sex offenses or kidnapping offenses;

(b) The petitioner has not been adjudicated or convicted of a violation of RCW 9A.44.132 (failure to register) during the twenty-four months prior to filing the petition; and

(c) The petitioner shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders.

(4) A petition for relief from registration under this section shall be made to the court in which the petitioner was convicted of the offense that subjects him or her to the duty to register or, in the case of convictions in other states, a foreign country, or a federal or military court, to the court in Thurston

county. The prosecuting attorney of the county shall be named and served as the respondent in any such petition.

(5) In determining whether the petitioner is sufficiently rehabilitated to warrant removal from the central registry of sex offenders and kidnapping offenders, the following factors are provided as guidance to assist the court in making its determination, to the extent the factors are applicable considering the age and circumstances of the petitioner:

(a) The nature of the registrable offense committed including the number of victims and the length of the offense history;

(b) Any subsequent criminal history;

(c) The petitioner's compliance with supervision requirements;

(d) The length of time since the charged incident(s) occurred;

(e) Any input from community corrections officers, juvenile parole or probation officers, law enforcement, or treatment providers;

(f) Participation in sex offender treatment;

(g) Participation in other treatment and rehabilitative programs;

(h) The offender's stability in employment and housing;

(i) The offender's community and personal support system;

(j) Any risk assessments or evaluations prepared by a qualified professional;

(k) Any updated polygraph examination;

(l) Any input of the victim;

(m) Any other factors the court may consider relevant.

(6) A juvenile prosecuted and convicted of a sex offense or kidnapping offense as an adult may not petition to the superior court under this section. [2011 c 338 § 1; 2010 c 267 § 7.]

Application—2010 c 267: See note following RCW 9A.44.128.

Chapter 9A.46 RCW HARASSMENT

Sections

9A.46.020	Definition—Penalties.
9A.46.040	Court-ordered requirements upon person charged with crime—Violation.
9A.46.080	Order restricting contact—Violation.

9A.46.020 Definition—Penalties. (1) A person is guilty of harassment if:

(a) Without lawful authority, the person knowingly threatens:

(i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or

(ii) To cause physical damage to the property of a person other than the actor; or

(iii) To subject the person threatened or any other person to physical confinement or restraint; or

(iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

(b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other

form of communication or conduct, the sending of an electronic communication.

(2)(a) Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.

(b) A person who harasses another is guilty of a class C felony if any of the following apply: (i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order; (ii) the person harasses another person under subsection (1)(a)(i) of this section by threatening to kill the person threatened or any other person; (iii) the person harasses a criminal justice participant who is performing his or her official duties at the time the threat is made; or (iv) the person harasses a criminal justice participant because of an action taken or decision made by the criminal justice participant during the performance of his or her official duties. For the purposes of (b)(iii) and (iv) of this subsection, the fear from the threat must be a fear that a reasonable criminal justice participant would have under all the circumstances. Threatening words do not constitute harassment if it is apparent to the criminal justice participant that the person does not have the present and future ability to carry out the threat.

(3) Any criminal justice participant who is a target for threats or harassment prohibited under subsection (2)(b)(iii) or (iv) of this section, and any family members residing with him or her, shall be eligible for the address confidentiality program created under RCW 40.24.030.

(4) For purposes of this section, a criminal justice participant includes any (a) federal, state, or local law enforcement agency employee; (b) federal, state, or local prosecuting attorney or deputy prosecuting attorney; (c) staff member of any adult corrections institution or local adult detention facility; (d) staff member of any juvenile corrections institution or local juvenile detention facility; (e) community corrections officer, probation, or parole officer; (f) member of the indeterminate sentence review board; (g) advocate from a crime victim/witness program; or (h) defense attorney.

(5) The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law. [2011 c 64 § 1; 2003 c 53 § 69; 1999 c 27 § 2; 1997 c 105 § 1; 1992 c 186 § 2; 1985 c 288 § 2.]

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

Intent—1999 c 27: "It is the intent of chapter 27, Laws of 1999 to clarify that electronic communications are included in the types of conduct and actions that can constitute the crimes of harassment and stalking. It is not the intent of the legislature, by adoption of chapter 27, Laws of 1999, to restrict in any way the types of conduct or actions that can constitute harassment or stalking." [1999 c 27 § 1.]

Additional notes found at www.leg.wa.gov

9A.46.040 Court-ordered requirements upon person charged with crime—Violation. (1) Because of the likelihood of repeated harassment directed at those who have been victims of harassment in the past, when any defendant charged with a crime involving harassment is released from custody before trial on bail or personal recognizance, the court authorizing the release may require that the defendant:

(a) Stay away from the home, school, business, or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the court in the order;

(b) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including but not limited to members of the family or household of the victim, as shall be specifically named by the court in the order.

(2) An intentional violation of a court order issued under this section or an equivalent local ordinance is a misdemeanor. The written order releasing the defendant shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW. A certified copy of the order shall be provided to the victim by the clerk of the court. [2011 c 307 § 4; 1985 c 288 § 4.]

9A.46.080 Order restricting contact—Violation. The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of harassment and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. Willful violation of a court order issued under this section or an equivalent local ordinance is a misdemeanor. The written order shall contain the court's directives and shall bear the legend: Violation of this order is a criminal offense under chapter 9A.46 RCW and will subject a violator to arrest. [2011 c 307 § 5; 1985 c 288 § 8.]

Chapter 9A.48 RCW

ARSON, RECKLESS BURNING, AND MALICIOUS MISCHIEF

Sections

9A.48.030	Arson in the second degree.
9A.48.040	Reckless burning in the first degree.
9A.48.050	Reckless burning in the second degree.

9A.48.030 Arson in the second degree. (1) A person is guilty of arson in the second degree if he or she knowingly and maliciously causes a fire or explosion which damages a building, or any structure or erection appurtenant to or joining any building, or any wharf, dock, machine, engine, automobile, or other motor vehicle, watercraft, aircraft, bridge, or trestle, or hay, grain, crop, or timber, whether cut or standing or any range land, or pasture land, or any fence, or any lumber, shingle, or other timber products, or any property.

(2) Arson in the second degree is a class B felony. [2011 c 336 § 366; 1975 1st ex.s. c 260 § 9A.48.030.]

9A.48.040 Reckless burning in the first degree. (1) A person is guilty of reckless burning in the first degree if he or she recklessly damages a building or other structure or any vehicle, railway car, aircraft, or watercraft or any hay, grain, crop, or timber whether cut or standing, by knowingly causing a fire or explosion.

(2) Reckless burning in the first degree is a class C felony. [2011 c 336 § 367; 1975 1st ex.s. c 260 § 9A.48.040.]

9A.48.050 Reckless burning in the second degree. (1) A person is guilty of reckless burning in the second degree if he or she knowingly causes a fire or explosion, whether on his or her own property or that of another, and thereby recklessly places a building or other structure, or any vehicle, railway car, aircraft, or watercraft, or any hay, grain, crop or timber, whether cut or standing, in danger of destruction or damage.

(2) Reckless burning in the second degree is a gross misdemeanor. [2011 c 336 § 368; 1975 1st ex.s. c 260 § 9A.48.050.]

Chapter 9A.52 RCW BURGLARY AND TRESPASS

Sections

9A.52.010	Definitions.
9A.52.025	Residential burglary.
9A.52.030	Burglary in the second degree.
9A.52.060	Making or having burglar tools.
9A.52.070	Criminal trespass in the first degree.
9A.52.080	Criminal trespass in the second degree.
9A.52.090	Criminal trespass—Defenses.
9A.52.095	Vehicle prowling in the first degree.
9A.52.100	Vehicle prowling in the second degree.

9A.52.010 Definitions. The following definitions apply in this chapter:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, directly or by electronic means.

(2) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data.

(3) "Data" means a representation of information, knowledge, facts, concepts, or instructions that are being prepared or have been prepared in a formalized manner and are intended for use in a computer.

(4) "Enter." The word "enter" when constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his or her body, or any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person or to detach or remove property;

(5) "Enters or remains unlawfully." A person "enters or remains unlawfully" in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

Land that is used for commercial aquaculture or for growing an agricultural crop or crops, other than timber, is not unimproved and apparently unused land if a crop or any other sign of cultivation is clearly visible or if notice is given by posting in a conspicuous manner. Similarly, a field fenced in any manner is not unimproved and apparently unused land. A license or privilege to enter or remain on improved and apparently used land that is open to the public at particular times, which is neither fenced nor otherwise enclosed in a manner to exclude intruders, is not a license or privilege to enter or remain on the land at other times if notice of prohibited times of entry is posted in a conspicuous manner.

(6) "Premises" includes any building, dwelling, structure used for commercial aquaculture, or any real property. [2011 c 336 § 369; 2004 c 69 § 1; 1985 c 289 § 1. Prior: 1984 c 273 § 5; 1984 c 49 § 1; 1975 1st ex.s. c 260 § 9A.52.010.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

9A.52.025 Residential burglary. (1) A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

(2) Residential burglary is a class B felony. In establishing sentencing guidelines and disposition standards, residential burglary is to be considered a more serious offense than second degree burglary. [2011 1st sp.s. c 40 § 38; 1989 2nd ex.s. c 1 § 1; 1989 c 412 § 1.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

9A.52.030 Burglary in the second degree. (1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle or a dwelling.

(2) Burglary in the second degree is a class B felony. [2011 c 336 § 370; 1989 2nd ex.s. c 1 § 2; 1989 c 412 § 2; 1975-'76 2nd ex.s. c 38 § 7; 1975 1st ex.s. c 260 § 9A.52.030.]

Additional notes found at www.leg.wa.gov

9A.52.060 Making or having burglar tools. (1) Every person who shall make or mend or cause to be made or mended, or have in his or her possession, any engine, machine, tool, false key, pick lock, bit, nippers, or implement adapted, designed, or commonly used for the commission of burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used, shall be guilty of making or having burglar tools.

(2) Making or having burglar tools is a gross misdemeanor. [2011 c 336 § 371; 1975 1st ex.s. c 260 § 9A.52.060.]

9A.52.070 Criminal trespass in the first degree. (1) A person is guilty of criminal trespass in the first degree if he or she knowingly enters or remains unlawfully in a building.

(2) Criminal trespass in the first degree is a gross misdemeanor. [2011 c 336 § 372; 1979 ex.s. c 244 § 12; 1975 1st ex.s. c 260 § 9A.52.070.]

Additional notes found at www.leg.wa.gov

9A.52.080 Criminal trespass in the second degree.

(1) A person is guilty of criminal trespass in the second degree if he or she knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.

(2) Criminal trespass in the second degree is a misdemeanor. [2011 c 336 § 373; 1979 ex.s. c 244 § 13; 1975 1st ex.s. c 260 § 9A.52.080.]

Additional notes found at www.leg.wa.gov

9A.52.090 Criminal trespass—Defenses. In any prosecution under RCW 9A.52.070 and 9A.52.080, it is a defense that:

(1) A building involved in an offense under RCW 9A.52.070 was abandoned; or

(2) The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him or her to enter or remain; or

(4) The actor was attempting to serve legal process which includes any document required or allowed to be served upon persons or property, by any statute, rule, ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process. [2011 c 336 § 374; 1986 c 219 § 2; 1975 1st ex.s. c 260 § 9A.52.090.]

9A.52.095 Vehicle prowling in the first degree. (1) A person is guilty of vehicle prowling in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a motor home, as defined in RCW 46.04.305, or in a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the first degree is a class C felony. [2011 c 336 § 375; 1982 1st ex.s. c 47 § 13.]

Additional notes found at www.leg.wa.gov

9A.52.100 Vehicle prowling in the second degree. (1) A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a vehicle other than a motor home, as defined in RCW 46.04.305, or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the second degree is a gross misdemeanor. [2011 c 336 § 376; 1982 1st ex.s. c 47 § 14; 1975 1st ex.s. c 260 § 9A.52.100.]

Additional notes found at www.leg.wa.gov

**Chapter 9A.56 RCW
THEFT AND ROBBERY**

Sections

9A.56.010	Definitions.
9A.56.120	Extortion in the first degree.
9A.56.180	Obscuring the identity of a machine.
9A.56.190	Robbery—Definition.
9A.56.210	Robbery in the second degree.
9A.56.370	Mail theft.
9A.56.380	Possession of stolen mail.
9A.56.390	Mail theft—Possession of stolen mail—Commission of other crime.

9A.56.010 Definitions. The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(2) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(3) "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of," "owned by," or other markings or words identifying ownership;

(4) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(5) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed;

(6) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(7) "Mail," in addition to its common meaning, means any letter, postal card, package, bag, or other item that is addressed to a specific address for delivery by the United States postal service or any commercial carrier performing the function of delivering similar items to residences or businesses, provided the mail:

(a)(i) Is addressed with a specific person's name, family name, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(ii) Is not addressed to a generic unnamed occupant or resident of the address without an identifiable person, family, or company, business, or corporation name on the outside of the item of mail or on the contents inside; and

(b) Has been left for collection or delivery in any letter box, mailbox, mail receptacle, or other authorized depository for mail, or given to a mail carrier, or left with any private business that provides mailboxes or mail addresses for customers or when left in a similar location for collection or delivery by any commercial carrier; or

(c) Is in transit with a postal service, mail carrier, letter carrier, commercial carrier, or that is at or in a postal vehicle, postal station, mailbox, postal airplane, transit station, or similar location of a commercial carrier; or

(d) Has been delivered to the intended address, but has not been received by the intended addressee.

Mail, for purposes of chapter 164, Laws of 2011, does not include magazines, catalogs, direct mail inserts, newsletters, advertising circulars, or any mail that is considered third-class mail by the United States postal service;

(8) "Mailbox," in addition to its common meaning, means any authorized depository or receptacle of mail for the United States postal service or authorized depository for a commercial carrier that provides services to the general public, including any address to which mail is or can be addressed, or a place where the United States postal service or equivalent commercial carrier delivers mail to its addressee;

(9) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed before or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;

(10) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

(11) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

(12) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle;

(13) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

(14) "Received by the intended addressee" means that the addressee, owner of the delivery mailbox, or authorized agent has removed the delivered mail from its delivery mailbox;

(15) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, res-

taurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

(16) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

(17) "Stolen" means obtained by theft, robbery, or extortion;

(18) "Subscription television service" means cable or encrypted video and related audio and data services intended for viewing on a home television by authorized members of the public only, who have agreed to pay a fee for the service. Subscription services include but are not limited to those video services presently delivered by coaxial cable, fiber optic cable, terrestrial microwave, television broadcast, and satellite transmission;

(19) "Telecommunication device" means (a) any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic or electronic communications; or (b) any part of such an instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, that is capable of facilitating the transmission or reception of telephonic or electronic communications;

(20) "Telecommunication service" includes any service other than subscription television service provided for a charge or compensation to facilitate the transmission, transfer, or reception of a telephonic communication or an electronic communication;

(21) Value. (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Except as provided in RCW 9A.56.340(4) and 9A.56.350(4), whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a criminal episode or a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions

shall be the value considered in determining the degree of theft involved.

For purposes of this subsection, "criminal episode" means a series of thefts committed by the same person from one or more mercantile establishments on three or more occasions within a five-day period.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved. Theft committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

(22) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where the use is unauthorized by the partnership agreement. [2011 c 164 § 2; 2006 c 277 § 4; 2002 c 97 § 1; 1999 c 143 § 36; 1998 c 236 § 1; 1997 c 346 § 2; 1995 c 92 § 1; 1987 c 140 § 1; 1986 c 257 § 2; 1985 c 382 § 1; 1984 c 273 § 6; 1975-'76 2nd ex.s. c 38 § 8; 1975 1st ex.s. c 260 § 9A.56.010.]

Intent—2011 c 164: "It is important to the citizens of this state to have confidence in the security of the mail. Mail contains personal information, medical records, and financial documents. Theft of mail has become a serious problem in our state because mail is a key source of information for identity thieves. Currently, there is no law that adequately addresses the seriousness of this crime. This act is intended to accurately recognize the seriousness of taking personal, medical, or financial identifying information and compromising the integrity of our mail system." [2011 c 164 § 1.]

Additional notes found at www.leg.wa.gov

9A.56.120 Extortion in the first degree. (1) A person is guilty of extortion in the first degree if he or she commits extortion by means of a threat as defined in *RCW 9A.04.110(27) (a), (b), or (c).

(2) Extortion in the first degree is a class B felony. [2011 c 336 § 377; 1975 1st ex.s. c 260 § 9A.56.120.]

*Reviser's note: RCW 9A.04.110 was amended by 2011 c 166 § 2, changing subsection (27) to subsection (28).

9A.56.180 Obscuring the identity of a machine. (1) A person is guilty of obscuring the identity of a machine if he or she knowingly:

(a) Obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any vehicle, machine, engine, apparatus, appliance, or other device with intent to render it unidentifiable; or

(b) Possesses a vehicle, machine, engine, apparatus, appliance, or other device held for sale knowing that the serial number or other identification number or mark has been obscured.

(2) "Obscure" means to remove, deface, cover, alter, destroy, or otherwise render unidentifiable.

(3) Obscuring the identity of a machine is a gross misdemeanor. [2011 c 336 § 378; 1975-'76 2nd ex.s. c 38 § 11; 1975 1st ex.s. c 260 § 9A.56.180.]

Additional notes found at www.leg.wa.gov

9A.56.190 Robbery—Definition. A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear. [2011 c 336 § 379; 1975 1st ex.s. c 260 § 9A.56.190.]

9A.56.210 Robbery in the second degree. (1) A person is guilty of robbery in the second degree if he or she commits robbery.

(2) Robbery in the second degree is a class B felony. [2011 c 336 § 380; 1975 1st ex.s. c 260 § 9A.56.210.]

9A.56.370 Mail theft. (1) A person is guilty of mail theft if he or she: (a) Commits theft of mail addressed to three or more different addresses; and (b) commits theft of a minimum of ten separate pieces of mail.

(2) Each set of ten separate pieces of stolen mail addressed to three or more different mailboxes constitutes a separate and distinct crime and may be punished accordingly.

(3) Mail theft is a class C felony. [2011 c 164 § 3.]

Intent—2011 c 164: See note following RCW 9A.56.010.

9A.56.380 Possession of stolen mail. (1) A person is guilty of possession of stolen mail if he or she: (a) Possesses stolen mail addressed to three or more different mailboxes; and (b) possesses a minimum of ten separate pieces of stolen mail.

(2) "Possesses stolen mail" means to knowingly receive, retain, possess, conceal, or dispose of stolen mail knowing that it has been stolen, and to withhold or appropriate to the use of any person other than the true owner, or the person to whom the mail is addressed.

(3) The fact that the person who stole the mail has not been convicted, apprehended, or identified is not a defense to the charge of possessing stolen mail.

(4) Each set of ten separate pieces of stolen mail addressed to three or more different mailboxes constitutes a separate and distinct crime and may be punished accordingly.

(5) Possession of stolen mail is a class C felony. [2011 c 164 § 4.]

Intent—2011 c 164: See note following RCW 9A.56.010.

9A.56.390 Mail theft—Possession of stolen mail—Commission of other crime. Every person who, in the commission of mail theft or possession of stolen mail, shall commit any other crime, may be punished therefor as well as for the mail theft or possession of stolen mail, and may be prosecuted for each crime separately. [2011 c 164 § 5.]

Intent—2011 c 164: See note following RCW 9A.56.010.

Chapter 9A.60 RCW

FRAUD

Sections

9A.60.010	Definitions.
9A.60.020	Forgery.
9A.60.030	Obtaining a signature by deception or duress.
9A.60.050	False certification.

9A.60.010 Definitions. The following definitions and the definitions of RCW 9A.56.010 are applicable in this chapter unless the context otherwise requires:

(1) "Complete written instrument" means one which is fully drawn with respect to every essential feature thereof;

(2) "Incomplete written instrument" means one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;

(3) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;

(4) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;

(5) To "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, he or she did not authorize the making or drawing thereof;

(6) "Forged instrument" means a written instrument which has been falsely made, completed, or altered;

(7) "Written instrument" means: (a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or (b) any access device, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification. [2011 c 336 § 381; 1999 c 143 § 38; 1987 c 140 § 5; 1975-'76 2nd ex.s. c 38 § 12; 1975 1st ex.s. c 260 § 9A.60.010.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

9A.60.020 Forgery. (1) A person is guilty of forgery if, with intent to injure or defraud:

(a) He or she falsely makes, completes, or alters a written instrument or;

(b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.

(2) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

(3) Forgery is a class C felony. [2011 c 336 § 382; 2003 c 119 § 5; 1975-'76 2nd ex.s. c 38 § 13; 1975 1st ex.s. c 260 § 9A.60.020.]

Additional notes found at www.leg.wa.gov

9A.60.030 Obtaining a signature by deception or duress. (1) A person is guilty of obtaining a signature by deception or duress if by deception or duress and with intent to defraud or deprive he or she causes another person to sign or execute a written instrument.

(2) Obtaining a signature by deception or duress is a class C felony. [2011 c 336 § 383; 1975-'76 2nd ex.s. c 38 § 14; 1975 1st ex.s. c 260 § 9A.60.030.]

Additional notes found at www.leg.wa.gov

9A.60.050 False certification. (1) A person is guilty of false certification, if, being an officer authorized to take a proof or acknowledgment of an instrument which by law may be recorded, he or she knowingly certifies falsely that the execution of such instrument was acknowledged by any party thereto or that the execution thereof was proved.

(2) False certification is a gross misdemeanor. [2011 c 336 § 384; 1975-'76 2nd ex.s. c 38 § 15; 1975 1st ex.s. c 260 § 9A.60.050.]

Additional notes found at www.leg.wa.gov

Chapter 9A.64 RCW

FAMILY OFFENSES

Sections

9A.64.010	Bigamy.
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9A.64.010 Bigamy. (1) A person is guilty of bigamy if he or she intentionally marries or purports to marry another person when either person has a living spouse.

(2) In any prosecution under this section, it is a defense that at the time of the subsequent marriage or purported marriage:

(a) The actor reasonably believed that the prior spouse was dead; or

(b) A court had entered a judgment purporting to terminate or annul any prior disqualifying marriage and the actor did not know that such judgment was invalid; or

(c) The actor reasonably believed that he or she was legally eligible to marry.

(3) The limitation imposed by RCW 9A.04.080 on commencing a prosecution for bigamy does not begin to run until the death of the prior or subsequent spouse of the actor or until a court enters a judgment terminating or annulling the prior or subsequent marriage.

(4) Bigamy is a class C felony. [2011 c 336 § 385; 1986 c 257 § 14; 1975 1st ex.s. c 260 § 9A.64.010.]

Additional notes found at www.leg.wa.gov

Chapter 9A.68 RCW

BRIBERY AND CORRUPT INFLUENCE

Sections

9A.68.010	Bribery.
9A.68.020	Requesting unlawful compensation.
9A.68.030	Receiving or granting unlawful compensation.
9A.68.040	Trading in public office.
9A.68.050	Trading in special influence.

9A.68.010 Bribery. (1) A person is guilty of bribery if:

(a) With the intent to secure a particular result in a particular matter involving the exercise of the public servant's vote, opinion, judgment, exercise of discretion, or other action in his or her official capacity, he or she offers, confers, or agrees to confer any pecuniary benefit upon such public servant; or

(b) Being a public servant, he or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that his or her vote, opinion, judgment, exercise of discretion, or other action as a public servant will be used to secure or attempt to secure a particular result in a particular matter.

(2) It is no defense to a prosecution under this section that the public servant sought to be influenced was not qualified to act in the desired way, whether because he or she had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery is a class B felony. [2011 c 336 § 386; 1975 1st ex.s. c 260 § 9A.68.010.]

9A.68.020 Requesting unlawful compensation. (1) A public servant is guilty of requesting unlawful compensation if he or she requests a pecuniary benefit for the performance of an official action knowing that he or she is required to perform that action without compensation or at a level of compensation lower than that requested.

(2) Requesting unlawful compensation is a class C felony. [2011 c 336 § 387; 1975 1st ex.s. c 260 § 9A.68.020.]

9A.68.030 Receiving or granting unlawful compensation. (1) A person is guilty of receiving or granting unlawful compensation if:

(a) Being a public servant, he or she requests, accepts, or agrees to accept compensation for advice or other assistance in preparing a bill, contract, claim, or transaction regarding which he or she knows he or she is likely to have an official discretion to exercise; or

(b) He or she knowingly offers, pays, or agrees to pay compensation to a public servant for advice or other assistance in preparing or promoting a bill, contract, claim, or

other transaction regarding which the public servant is likely to have an official discretion to exercise.

(2) Receiving or granting unlawful compensation is a class C felony. [2011 c 336 § 388; 1975 1st ex.s. c 260 § 9A.68.030.]

9A.68.040 Trading in public office. (1) A person is guilty of trading in public office if:

(a) He or she offers, confers, or agrees to confer any pecuniary benefit upon a public servant pursuant to an agreement or understanding that such actor will or may be appointed to a public office; or

(b) Being a public servant, he or she requests, accepts, or agrees to accept any pecuniary benefit from another person pursuant to an agreement or understanding that such person will or may be appointed to a public office.

(2) Trading in public office is a class C felony. [2011 c 336 § 389; 1975 1st ex.s. c 260 § 9A.68.040.]

9A.68.050 Trading in special influence. (1) A person is guilty of trading in special influence if:

(a) He or she offers, confers, or agrees to confer any pecuniary benefit upon another person pursuant to an agreement or understanding that such other person will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter; or

(b) He or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he or she will offer or confer a benefit upon a public servant or procure another to do so with intent thereby to secure or attempt to secure a particular result in a particular matter.

(2) Trading in special influence is a class C felony. [2011 c 336 § 390; 1975 1st ex.s. c 260 § 9A.68.050.]

Chapter 9A.72 RCW

PERJURY AND INTERFERENCE WITH OFFICIAL PROCEEDINGS

Sections

9A.72.020	Perjury in the first degree.
9A.72.040	False swearing.
9A.72.060	Perjury and false swearing—Retraction.
9A.72.080	Statement of what one does not know to be true.
9A.72.110	Intimidating a witness.
9A.72.120	Tampering with a witness.
9A.72.130	Intimidating a juror.
9A.72.140	Jury tampering.
9A.72.150	Tampering with physical evidence.

9A.72.020 Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law.

(2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his or her statement was not material is not a defense to a prosecution under this section.

(3) Perjury in the first degree is a class B felony. [2011 c 336 § 391; 1975 1st ex.s. c 260 § 9A.72.020.]

9A.72.040 False swearing. (1) A person is guilty of false swearing if he or she makes a false statement, which he or she knows to be false, under an oath required or authorized by law.

(2) False swearing is a gross misdemeanor. [2011 c 336 § 392; 1975 1st ex.s. c 260 § 9A.72.040.]

9A.72.060 Perjury and false swearing—Retraction. No person shall be convicted of perjury or false swearing if he or she retracts his or her false statement in the course of the same proceeding in which it was made, if in fact he or she does so before it becomes manifest that the falsification is or will be exposed and before the falsification substantially affects the proceeding. Statements made in separate hearings at separate stages of the same trial, administrative, or other official proceeding shall be treated as if made in the course of the same proceeding. [2011 c 336 § 393; 1975-'76 2nd ex.s. c 38 § 16; 1975 1st ex.s. c 260 § 9A.72.060.]

Additional notes found at www.leg.wa.gov

9A.72.080 Statement of what one does not know to be true. Every unqualified statement of that which one does not know to be true is equivalent to a statement of that which he or she knows to be false. [2011 c 336 § 394; 1975 1st ex.s. c 260 § 9A.72.080.]

9A.72.110 Intimidating a witness. (1) A person is guilty of intimidating a witness if a person, by use of a threat against a current or prospective witness, attempts to:

- (a) Influence the testimony of that person;
- (b) Induce that person to elude legal process summoning him or her to testify;
- (c) Induce that person to absent himself or herself from such proceedings; or
- (d) Induce that person not to report the information relevant to a criminal investigation or the abuse or neglect of a minor child, not to have the crime or the abuse or neglect of a minor child prosecuted, or not to give truthful or complete information relevant to a criminal investigation or the abuse or neglect of a minor child.

(2) A person also is guilty of intimidating a witness if the person directs a threat to a former witness because of the witness's role in an official proceeding.

(3) As used in this section:

- (a) "Threat" means:
 - (i) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or
 - (ii) Threat as defined in *RCW 9A.04.110(27).
- (b) "Current or prospective witness" means:
 - (i) A person endorsed as a witness in an official proceeding;
 - (ii) A person whom the actor believes may be called as a witness in any official proceeding; or
 - (iii) A person whom the actor has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child.
- (c) "Former witness" means:
 - (i) A person who testified in an official proceeding;

(ii) A person who was endorsed as a witness in an official proceeding;

(iii) A person whom the actor knew or believed may have been called as a witness if a hearing or trial had been held; or

(iv) A person whom the actor knew or believed may have provided information related to a criminal investigation or an investigation into the abuse or neglect of a minor child.

(4) Intimidating a witness is a class B felony.

(5) For purposes of this section, each instance of an attempt to intimidate a witness constitutes a separate offense. [2011 c 165 § 2; 1997 c 29 § 1; 1994 c 271 § 204; 1985 c 327 § 2; 1982 1st ex.s. c 47 § 18; 1975 1st ex.s. c 260 § 9A.72.110.]

***Reviser's note:** RCW 9A.04.110 was amended by 2011 c 166 § 2, changing subsection (27) to subsection (28).

Intent—2011 c 165: "In response to *State v. Hall*, 168 Wn.2d 726 (2010), the legislature intends to clarify that each instance of an attempt to intimidate or tamper with a witness constitutes a separate violation for purposes of determining the unit of prosecution under the statutes governing tampering with a witness and intimidating a witness." [2011 c 165 § 1.]

Finding—1994 c 271: See note following RCW 9A.72.090.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.72.120 Tampering with a witness. (1) A person is guilty of tampering with a witness if he or she attempts to induce a witness or person he or she has reason to believe is about to be called as a witness in any official proceeding or a person whom he or she has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child to:

- (a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or
- (b) Absent himself or herself from such proceedings; or
- (c) Withhold from a law enforcement agency information which he or she has relevant to a criminal investigation or the abuse or neglect of a minor child to the agency.

(2) Tampering with a witness is a class C felony.

(3) For purposes of this section, each instance of an attempt to tamper with a witness constitutes a separate offense. [2011 c 165 § 3; 1994 c 271 § 205; 1982 1st ex.s. c 47 § 19; 1975 1st ex.s. c 260 § 9A.72.120.]

Intent—2011 c 165: See note following RCW 9A.72.110.

Finding—1994 c 271: See note following RCW 9A.72.090.

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Additional notes found at www.leg.wa.gov

9A.72.130 Intimidating a juror. (1) A person is guilty of intimidating a juror if a person directs a threat to a former juror because of the juror's vote, opinion, decision, or other official action as a juror, or if, by use of a threat, he or she attempts to influence a juror's vote, opinion, decision, or other official action as a juror.

(2) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in RCW 9A.04.110.

(3) Intimidating a juror is a class B felony. [2011 c 336 § 395; 1985 c 327 § 3; 1975 1st ex.s. c 260 § 9A.72.130.]

9A.72.140 Jury tampering. (1) A person is guilty of jury tampering if with intent to influence a juror's vote, opinion, decision, or other official action in a case, he or she attempts to communicate directly or indirectly with a juror other than as part of the proceedings in the trial of the case.

(2) Jury tampering is a gross misdemeanor. [2011 c 336 § 396; 1975 1st ex.s. c 260 § 9A.72.140.]

9A.72.150 Tampering with physical evidence. (1) A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted and acting without legal right or authority, he or she:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or prospective official proceeding; or

(b) Knowingly presents or offers any false physical evidence.

(2) "Physical evidence" as used in this section includes any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a gross misdemeanor. [2011 c 336 § 397; 1975 1st ex.s. c 260 § 9A.72.150.]

Chapter 9A.76 RCW

OBSTRUCTING GOVERNMENTAL OPERATION

Sections

9A.76.030	Refusing to summon aid for a peace officer.
9A.76.040	Resisting arrest.
9A.76.050	Rendering criminal assistance—Definition of term.
9A.76.090	Rendering criminal assistance in the third degree.
9A.76.100	Compounding.
9A.76.130	Escape in the third degree.
9A.76.140	Introducing contraband in the first degree.
9A.76.150	Introducing contraband in the second degree.
9A.76.160	Introducing contraband in the third degree.
9A.76.180	Intimidating a public servant.

9A.76.030 Refusing to summon aid for a peace officer. (1) A person is guilty of refusing to summon aid for a peace officer if, upon request by a person he or she knows to be a peace officer, he or she unreasonably refuses or fails to summon aid for such peace officer.

(2) Refusing to summon aid for a peace officer is a misdemeanor. [2011 c 336 § 398; 1975 1st ex.s. c 260 § 9A.76.030.]

9A.76.040 Resisting arrest. (1) A person is guilty of resisting arrest if he or she intentionally prevents or attempts to prevent a peace officer from lawfully arresting him or her.

(2) Resisting arrest is a misdemeanor. [2011 c 336 § 399; 1975 1st ex.s. c 260 § 9A.76.040.]

9A.76.050 Rendering criminal assistance—Definition of term. As used in RCW 9A.76.070, 9A.76.080, and 9A.76.090, a person "renders criminal assistance" if, with

intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense or has escaped from a detention facility, he or she:

(1) Harbors or conceals such person; or

(2) Warns such person of impending discovery or apprehension; or

(3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or

(4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or

(5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or

(6) Provides such person with a weapon. [2011 c 336 § 400; 1982 1st ex.s. c 47 § 20; 1975 1st ex.s. c 260 § 9A.76.050.]

Additional notes found at www.leg.wa.gov

9A.76.090 Rendering criminal assistance in the third degree. (1) A person is guilty of rendering criminal assistance in the third degree if he or she renders criminal assistance to a person who has committed a gross misdemeanor or misdemeanor.

(2) Rendering criminal assistance in the third degree is a misdemeanor. [2011 c 336 § 401; 1975 1st ex.s. c 260 § 9A.76.090.]

9A.76.100 Compounding. (1) A person is guilty of compounding if:

(a) He or she requests, accepts, or agrees to accept any pecuniary benefit pursuant to an agreement or understanding that he or she will refrain from initiating a prosecution for a crime; or

(b) He or she confers, or offers or agrees to confer, any pecuniary benefit upon another pursuant to an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.

(2) In any prosecution under this section, it is a defense if established by a preponderance of the evidence that the pecuniary benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

(3) Compounding is a gross misdemeanor. [2011 c 336 § 402; 1975 1st ex.s. c 260 § 9A.76.100.]

9A.76.130 Escape in the third degree. (1) A person is guilty of escape in the third degree if he or she escapes from custody.

(2) Escape in the third degree is a gross misdemeanor. [2011 c 336 § 403; 1975 1st ex.s. c 260 § 9A.76.130.]

Term of escaped prisoner recaptured: RCW 9.31.090.

9A.76.140 Introducing contraband in the first degree. (1) A person is guilty of introducing contraband in the first degree if he or she knowingly provides any deadly weapon to any person confined in a detention facility.

(2) Introducing contraband in the first degree is a class B felony. [2011 c 336 § 404; 1975 1st ex.s. c 260 § 9A.76.140.]

9A.76.150 Introducing contraband in the second degree. (1) A person is guilty of introducing contraband in the second degree if he or she knowingly and unlawfully provides contraband to any person confined in a detention facility with the intent that such contraband be of assistance in an escape or in the commission of a crime.

(2) Introducing contraband in the second degree is a class C felony. [2011 c 336 § 405; 1975 1st ex.s. c 260 § 9A.76.150.]

9A.76.160 Introducing contraband in the third degree. (1) A person is guilty of introducing contraband in the third degree if he or she knowingly and unlawfully provides contraband to any person confined in a detention facility.

(2) Introducing contraband in the third degree is a misdemeanor. [2011 c 336 § 406; 1975 1st ex.s. c 260 § 9A.76.160.]

9A.76.180 Intimidating a public servant. (1) A person is guilty of intimidating a public servant if, by use of a threat, he or she attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant.

(2) For purposes of this section "public servant" shall not include jurors.

(3) "Threat" as used in this section means:

(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) Threats as defined in RCW 9A.04.110.

(4) Intimidating a public servant is a class B felony. [2011 c 336 § 407; 1975 1st ex.s. c 260 § 9A.76.180.]

Chapter 9A.80 RCW ABUSE OF OFFICE

Sections

9A.80.010 Official misconduct.

9A.80.010 Official misconduct. (1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:

(a) He or she intentionally commits an unauthorized act under color of law; or

(b) He or she intentionally refrains from performing a duty imposed upon him or her by law.

(2) Official misconduct is a gross misdemeanor. [2011 c 336 § 408; 1975-'76 2nd ex.s. c 38 § 17; 1975 1st ex.s. c 260 § 9A.80.010.]

Failure of duty by public officers: RCW 42.20.100.

Additional notes found at www.leg.wa.gov

[2011 RCW Supp—page 172]

Chapter 9A.83 RCW MONEY LAUNDERING

Sections

9A.83.040 Release from liability.

9A.83.040 Release from liability. No liability is imposed by this chapter upon any authorized state, county, or municipal officer engaged in the lawful performance of his or her duties, or upon any person who reasonably believes that he or she is acting at the direction of such officer and that the officer is acting in the lawful performance of his or her duties. [2011 c 336 § 409; 1992 c 210 § 4.]

Chapter 9A.84 RCW PUBLIC DISTURBANCE

Sections

9A.84.020 Failure to disperse.

9A.84.040 False reporting.

9A.84.020 Failure to disperse. (1) A person is guilty of failure to disperse if:

(a) He or she congregates with a group of three or more other persons and there are acts of conduct within that group which create a substantial risk of causing injury to any person, or substantial harm to property; and

(b) He or she refuses or fails to disperse when ordered to do so by a peace officer or other public servant engaged in enforcing or executing the law.

(2) Failure to disperse is a misdemeanor. [2011 c 336 § 410; 1975 1st ex.s. c 260 § 9A.84.020.]

9A.84.040 False reporting. (1) A person is guilty of false reporting if with knowledge that the information reported, conveyed, or circulated is false, he or she initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, or emergency knowing that such false report is likely to cause evacuation of a building, place of assembly, or transportation facility, or to cause public inconvenience or alarm.

(2) False reporting is a gross misdemeanor. [2011 c 336 § 411; 1975 1st ex.s. c 260 § 9A.84.040.]

Chapter 9A.88 RCW INDECENT EXPOSURE—PROSTITUTION

Sections

9A.88.060 Promoting prostitution—Definitions.

9A.88.080 Promoting prostitution in the second degree.

9A.88.090 Permitting prostitution.

9A.88.060 Promoting prostitution—Definitions. The following definitions are applicable in RCW 9A.88.070 through 9A.88.090:

(1) "Advances prostitution." A person "advances prostitution" if, acting other than as a prostitute or as a customer thereof, he or she causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, oper-

ates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.

(2) "Profits from prostitution." A person "profits from prostitution" if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in the proceeds of prostitution activity. [2011 c 336 § 412; 1975 1st ex.s. c 260 § 9A.88.060.]

9A.88.080 Promoting prostitution in the second degree. (1) A person is guilty of promoting prostitution in the second degree if he or she knowingly:

- (a) Profits from prostitution; or
- (b) Advances prostitution.

(2) Promoting prostitution in the second degree is a class C felony. [2011 c 336 § 413; 1975 1st ex.s. c 260 § 9A.88.080.]

9A.88.090 Permitting prostitution. (1) A person is guilty of permitting prostitution if, having possession or control of premises which he or she knows are being used for prostitution purposes, he or she fails without lawful excuse to make reasonable effort to halt or abate such use.

(2) Permitting prostitution is a misdemeanor. [2011 c 336 § 414; 1975 1st ex.s. c 260 § 9A.88.090.]

Title 10

CRIMINAL PROCEDURE

Chapters

10.01	General provisions.
10.05	Deferred prosecution—Courts of limited jurisdiction.
10.14	Harassment.
10.31	Warrants and arrests.
10.37	Accusations and their requisites.
10.64	Judgments and sentences.
10.77	Criminally insane—Procedures.
10.82	Collection and disposition of fines and costs.
10.88	Uniform criminal extradition act.
10.92	Tribal police officers.
10.98	Criminal justice information act.
10.101	Indigent defense services.

Chapter 10.01 RCW

GENERAL PROVISIONS

Sections

10.01.230 Victim impact panel registry—Panel minimum standards.

10.01.230 Victim impact panel registry—Panel minimum standards. (1) The Washington traffic safety commission may develop and maintain a registry of qualified victim impact panels. When imposing a requirement that an offender attend a victim impact panel under RCW 46.61.5152, the court may refer the offender to a victim

impact panel that is listed in the registry. The Washington traffic safety commission may consult with victim impact panel organizations to develop and maintain a registry.

(2) To be listed on the registry, the victim impact panel must meet the following minimum standards:

(a) The victim impact panel must address the effects of driving while impaired on individuals and families and address alternatives to drinking and driving and drug use and driving;

(b) The victim impact panel should strive to have at least two different speakers, one of whom is a victim survivor of an impaired driving crash, to present their stories in person. A victim survivor may be the panel facilitator. The victim impact panel should be a minimum of sixty minutes of presentation, not including registration and administration time;

(c) The victim impact panel shall have policies and procedures to recruit, screen, train, and provide feedback and ongoing support to the panelists. The panel shall take reasonable steps to verify the authenticity of each panelist's story;

(d) The victim impact panel shall charge a reasonable fee to all persons required to attend, unless otherwise ordered by the court;

(e) The victim impact panel shall have a policy to prohibit admittance of anyone under the influence of alcohol or drugs, or anyone whose actions or behavior are otherwise inappropriate. The victim impact panel may institute additional admission requirements;

(f) The victim impact panel shall maintain attendance records for at least five years;

(g) The victim impact panel shall make reasonable efforts to use a facility that meets standards established by the Americans with disabilities act;

(h) The victim impact panel may provide referral information to other community services; and

(i) The victim impact panel shall have a designated facilitator who is responsible for the compliance with these minimum standards and who is responsible for maintaining appropriate records and communication with the referring courts and probationary departments regarding attendance or nonattendance. [2011 c 293 § 15.]

Chapter 10.05 RCW

DEFERRED PROSECUTION— COURTS OF LIMITED JURISDICTION

Sections

10.05.140 Conditions of granting.

10.05.140 Conditions of granting. As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred prosecution petition on any alcohol-dependency based case, the court shall also order the installation of an ignition interlock under RCW 46.20.720. The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720(3) (a), (b), and (c). As a condition of grant-

ing a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. To help ensure continued sobriety and reduce the likelihood of reoffense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of the deferred prosecution order. [2011 c 293 § 8; 2004 c 95 § 1; 2003 c 220 § 2; 1999 c 331 § 4; 1997 c 229 § 2; 1991 c 247 § 1; 1985 c 352 § 16.]

Effective date—2011 c 293 §§ 1-9: See note following RCW 46.20.385.

Legislative finding—Severability—1985 c 352: See notes following RCW 10.05.010.

Additional notes found at www.leg.wa.gov

Chapter 10.14 RCW HARASSMENT

Sections

10.14.020	Definitions.
10.14.065	Orders—Judicial information system to be consulted.
10.14.080	Antiharassment protection orders—Ex parte temporary—Hearing—Longer term, renewal—Acts not prohibited.
10.14.150	Jurisdiction.

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

(1) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

(2) "Unlawful harassment" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner, or, when the course of conduct would cause a reasonable parent to fear for the well-being of their child. [2011 c 307 § 2; 2001 c 260 § 2; 1999 c 27 § 4; 1995 c 127 § 1; 1987 c 280 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2001 c 260: "The legislature finds that unlawful harassment directed at a child by a person under the age of eighteen is not acceptable and can have serious consequences. The legislature further finds that some interactions between minors, such as "schoolyard scuffles," though not to be condoned, may not rise to the level of unlawful harassment. It is the intent of the legislature that a protection order sought by the parent or guardian of a child as provided for in this chapter be available only when the alleged behavior of the person under the age of eighteen to be restrained rises to the level set forth in chapter 10.14 RCW." [2001 c 260 § 1.]

Intent—1999 c 27: vSee note following RCW 9A.46.020.

10.14.065 Orders—Judicial information system to be consulted. Before granting an order under this chapter, the court may consult the judicial information system, if available, to determine criminal history or the pendency of other proceedings involving the parties. [2011 c 307 § 6.]

10.14.080 Antiharassment protection orders—Ex parte temporary—Hearing—Longer term, renewal—Acts not prohibited. (1) Upon filing a petition for a civil antiharassment protection order under this chapter, the petitioner may obtain an ex parte temporary antiharassment protection order. An ex parte temporary antiharassment protection order may be granted with or without notice upon the filing of an affidavit which, to the satisfaction of the court, shows reasonable proof of unlawful harassment of the petitioner by the respondent and that great or irreparable harm will result to the petitioner if the temporary antiharassment protection order is not granted.

(2) An ex parte temporary antiharassment protection order shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 10.14.085. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication is permitted. Except as provided in RCW 10.14.070 and 10.14.085, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing. The ex parte order and notice of hearing shall include at a minimum the date and time of the hearing set by the court to determine if the temporary order should be made effective for one year or more, and notice that if the respondent should fail to appear or otherwise not respond, an order for protection will be issued against the respondent pursuant to the provisions of this chapter, for a minimum of one year from the date of the hearing. The notice shall also include a brief statement of the provisions of the ex parte order and notify the respondent that a copy of the ex parte order and notice of hearing has been filed with the clerk of the court.

(3) At the hearing, if the court finds by a preponderance of the evidence that unlawful harassment exists, a civil antiharassment protection order shall issue prohibiting such unlawful harassment.

(4) An order issued under this chapter shall be effective for not more than one year unless the court finds that the respondent is likely to resume unlawful harassment of the petitioner when the order expires. If so, the court may enter an order for a fixed time exceeding one year or may enter a permanent antiharassment protection order. The court shall not enter an order that is effective for more than one year if the order restrains the respondent from contacting the respondent's minor children. This limitation is not applicable to civil antiharassment protection orders issued under chapter 26.09, 26.10, or 26.26 RCW. If the petitioner seeks relief for a period longer than one year on behalf of the respondent's minor children, the court shall advise the petitioner that the petitioner may apply for renewal of the order as provided in this chapter or if appropriate may seek relief pursuant to chapter 26.09 or 26.10 RCW.

(5) At any time within the three months before the expiration of the order, the petitioner may apply for a renewal of the order by filing a petition for renewal. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal, the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 10.14.085, personal service shall be made upon the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided by RCW 10.14.085. If the court permits service by publication, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in this section. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume harassment of the petitioner when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in subsection (4) of this section.

(6) The court, in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall have broad discretion to grant such relief as the court deems proper, including an order:

- (a) Restraining the respondent from making any attempts to contact the petitioner;
- (b) Restraining the respondent from making any attempts to keep the petitioner under surveillance;
- (c) Requiring the respondent to stay a stated distance from the petitioner's residence and workplace; and
- (d) Considering the provisions of RCW 9.41.800.

(7) The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall not prohibit the respondent from exercising constitutionally protected free speech. Nothing in this section prohibits the petitioner from utilizing other civil or criminal remedies to restrain conduct or communications not otherwise constitutionally protected.

(8) The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall not prohibit the respondent from the use or enjoyment of real property to which the respondent has a cognizable claim unless that order is issued under chapter 26.09 RCW or under a separate action commenced with a summons and complaint to determine title or possession of real property.

(9) The court in granting an ex parte temporary anti-harassment protection order or a civil anti-harassment protection order, shall not limit the respondent's right to care, control, or custody of the respondent's minor child, unless that order is issued under chapter 13.32A, 26.09, 26.10, or 26.26 RCW.

(10) A petitioner may not obtain an ex parte temporary anti-harassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent but has failed to obtain the issuance of a civil anti-harassment protection order unless good cause for such failure can be shown.

(11) The court order shall specify the date an order issued pursuant to subsections (4) and (5) of this section expires if any. The court order shall also state whether the court issued the protection order following personal service or service by publication and whether the court has approved service by publication of an order issued under this section. [2011 c 307 § 3; 2001 c 311 § 1; 1995 c 246 § 36; 1994 sp.s. c 7 § 448; 1992 c 143 § 11; 1987 c 280 § 8.]

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

Additional notes found at www.leg.wa.gov

10.14.150 Jurisdiction. (1) The district courts shall have original jurisdiction and cognizance of any civil actions and proceedings brought under this chapter, except the district court shall transfer such actions and proceedings to the superior court when it is shown that (a) the respondent to the petition is under eighteen years of age; (b) the action involves title or possession of real property; (c) a superior court has exercised or is exercising jurisdiction over a proceeding involving the parties; or (d) the action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child.

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

(3) Superior courts shall have concurrent jurisdiction to receive transfer of anti-harassment petitions in cases where a district or municipal court judge makes findings of fact and conclusions of law showing that meritorious reasons exist for the transfer. The municipal and district courts shall have jurisdiction and cognizance of any criminal actions brought under RCW 10.14.120 and 10.14.170. [2011 c 307 § 1; 2005 c 196 § 1; 1999 c 170 § 1; 1991 c 33 § 2; 1987 c 280 § 15.]

Additional notes found at www.leg.wa.gov

Chapter 10.31 RCW WARRANTS AND ARRESTS

Sections

10.31.110 Arrest—Individuals with mental disorders.

10.31.110 Arrest—Individuals with mental disorders. (1) When a police officer has reasonable cause to believe that the individual has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 10.77.092 and the individual is known by history or consultation with the regional support network to suffer from a mental disorder, the arresting officer may:

(a) Take the individual to a crisis stabilization unit as defined in RCW 71.05.020(6). Individuals delivered to a crisis stabilization unit pursuant to this section may be held by

the facility for a period of up to twelve hours. The individual must be examined by a mental health professional within three hours of arrival;

(b) Take the individual to a triage facility as defined in RCW 71.05.020. An individual delivered to a triage facility which has elected to operate as an involuntary facility may be held up to a period of twelve hours. The individual must be examined by a mental health professional within three hours of arrival;

(c) Refer the individual to a mental health professional for evaluation for initial detention and proceeding under chapter 71.05 RCW; or

(d) Release the individual upon agreement to voluntary participation in outpatient treatment.

(2) If the individual is released to the community, the mental health provider shall inform the arresting officer of the release within a reasonable period of time after the release if the arresting officer has specifically requested notification and provided contact information to the provider.

(3) In deciding whether to refer the individual to treatment under this section, the police officer shall be guided by standards mutually agreed upon with the prosecuting authority, which address, at a minimum, the length, seriousness, and recency of the known criminal history of the individual, the mental health history of the individual, where available, and the circumstances surrounding the commission of the alleged offense.

(4) Any agreement to participate in treatment shall not require individuals to stipulate to any of the alleged facts regarding the criminal activity as a prerequisite to participation in a mental health treatment alternative. The agreement is inadmissible in any criminal or civil proceeding. The agreement does not create immunity from prosecution for the alleged criminal activity.

(5) If an individual violates such agreement and the mental health treatment alternative is no longer appropriate:

(a) The mental health provider shall inform the referring law enforcement agency of the violation; and

(b) The original charges may be filed or referred to the prosecutor, as appropriate, and the matter may proceed accordingly.

(6) The police officer is immune from liability for any good faith conduct under this section. [2011 c 305 § 7; 2011 c 148 § 3; 2007 c 375 § 2.]

Reviser's note: This section was amended by 2011 c 148 § 3 and by 2011 c 305 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—2011 c 305: See note following RCW 74.09.295.

Certification of triage facilities—Effective date—2011 c 148: See notes following RCW 71.05.020.

Findings—Purpose—2007 c 375: "The legislature finds that *RCW 10.77.090 contains laws relating to three discrete subjects. Therefore, one purpose of this act is to reorganize some of those laws by creating new sections in the Revised Code of Washington that clarify and identify these discrete subjects.

The legislature further finds that there are disproportionate numbers of individuals with mental illness in jail. The needs of individuals with mental illness and the public safety needs of society at large are better served when individuals with mental illness are provided an opportunity to obtain treatment and support." [2007 c 375 § 1.]

***Reviser's note:** RCW 10.77.090 was repealed by 2007 c 375 § 17. For later enactment, see RCW 10.77.084, 10.77.086, and 10.77.088.

Construction—2007 c 375: "Nothing in this act shall be construed to alter or diminish a prosecutor's inherent authority to divert or pursue the prosecution of criminal offenders." [2007 c 375 § 16.]

Severability—2007 c 375: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 375 § 18.]

Chapter 10.37 RCW

ACCUSATIONS AND THEIR REQUISITES

Sections

10.37.015 Charge by information or indictment—Exceptions.

10.37.015 Charge by information or indictment—Exceptions. (1) No person shall be held to answer in any court for an alleged crime or offense, unless upon an information filed by the prosecuting attorney, or upon an indictment by a grand jury, except in cases of misdemeanor or gross misdemeanor before a district or municipal judge, or before a court martial, except as provided in subsection (2) of this section.

(2) Violations of RCW 46.20.342(1)(c)(iv) may be required by the prosecuting attorney to be referred to his or her office for consideration of filing an information or for entry into a precharge diversion program. [2011 c 46 § 1; 1987 c 202 § 167; 1927 c 103 § 1; Code 1881 § 764; RRS § 2023. Formerly RCW 10.37.010, part.]

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

Chapter 10.64 RCW

JUDGMENTS AND SENTENCES

Sections

10.64.025 Detention of defendant.

10.64.025 Detention of defendant. (1) A defendant who has been found guilty of a felony and is awaiting sentencing shall be detained unless the court finds by clear and convincing evidence that the defendant is not likely to flee or to pose a danger to the safety of any other person or the community if released. Any bail bond that was posted on behalf of a defendant shall, upon the defendant's conviction, be exonerated.

(2) A defendant who has been found guilty of one of the following offenses shall be detained pending sentencing: Rape in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076, and 9A.44.079); child molestation in the first, second, or third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a minor in the first or second degree (RCW 9A.44.093 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW 9A.40.090); human trafficking in the first or second degree (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); any class A or B felony that is a sexually motivated offense as defined in RCW 9.94A.030; a felony violation of RCW 9.68A.090; or any offense that is, under chapter 9A.28 RCW, a criminal attempt, solicitation, or conspiracy to

commit one of those offenses. [2011 c 111 § 4; 1996 c 275 § 10; 1989 c 276 § 2.]

Finding—1996 c 275: See note following RCW 9.94A.505.

Additional notes found at www.leg.wa.gov

Chapter 10.77 RCW

CRIMINALLY INSANE—PROCEDURES

Sections

10.77.010	Definitions. (<i>Effective January 1, 2012.</i>)
10.77.152	Conditional release—Application—County of origin.
10.77.165	Escape or disappearance—Notification requirements.

10.77.010 Definitions. (*Effective January 1, 2012.*)

As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(3) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms.

(4) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

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

(6) "Designated mental health professional" has the same meaning as provided in RCW 71.05.020.

(7) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

(8) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(9) "Developmental disability" means the condition as defined in *RCW 71A.10.020(3).

(10) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(11) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(12) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical,

mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct.

(13) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(14) "Immediate family member" means a spouse, child, stepchild, parent, stepparent, grandparent, sibling, or domestic partner.

(15) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(16) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(17) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual release, and a projected possible date for release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(18) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW; or

(c) A social worker with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

(19) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who

are receiving or who at any time have received services for mental illness.

(20) "Release" means legal termination of the court-ordered commitment under the provisions of this chapter.

(21) "Secretary" means the secretary of the department of social and health services or his or her designee.

(22) "Treatment" means any currently standardized medical or mental health procedure including medication.

(23) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(24) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. As used in this subsection, "nonfatal injuries" means physical pain or injury, illness, or an impairment of physical condition. "Nonfatal injuries" shall be construed to be consistent with the definition of "bodily injury," as defined in RCW 9A.04.110. [2011 c 89 § 4; 2010 c 262 § 2; 2005 c 504 § 106; 2004 c 157 § 2; 2000 c 94 § 12. Prior: 1999 c 143 § 49; 1999 c 13 § 2; 1998 c 297 § 29; 1993 c 31 § 4; 1989 c 420 § 3; 1983 c 122 § 1; 1974 ex.s. c 198 § 1; 1973 1st ex.s. c 117 § 1.]

***Reviser's note:** RCW 71A.10.020 was amended by 2011 1st sp.s. c 30 § 3, changing subsection (3) to subsection (4).

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

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

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

Findings—Intent—2004 c 157: "The legislature finds that recent state and federal case law requires clarification of state statutes with regard to competency evaluations and involuntary medication ordered in the context of competency restoration.

The legislature finds that the court in *Born v. Thompson*, 117 Wn. App. 57 (2003) interpreted the term "nonfatal injuries" in a manner that conflicts with the stated intent of the legislature to: "(1) Clarify that it is the nature of a person's current conduct, current mental condition, history, and likelihood of committing future acts that pose a threat to public safety or himself or herself, rather than simple categorization of offenses, that should determine treatment procedures and level; ... and (3) provide additional opportunities for mental health treatment for persons whose conduct threatens himself or herself or threatens public safety and has led to contact with the criminal justice system" as stated in section 1, chapter 297, Laws of 1998. Consequently, the legislature intends to clarify that it intended "nonfatal injuries" to be interpreted in a manner consistent with the purposes of the competency restoration statutes.

The legislature also finds that the decision in *Sell v. United States*, ___ U.S. ___ (2003), requires a determination whether a particular criminal offense is "serious" in the context of competency restoration and the state's duty to protect the public. The legislature further finds that, in order to adequately protect the public and in order to provide additional opportunities for mental health treatment for persons whose conduct threatens themselves or threatens public safety and has led to contact with the criminal justice system in the state, the determination of those criminal offenses that are "serious"

offenses must be made consistently throughout the state. In order to facilitate this consistency, the legislature intends to determine those offenses that are serious in every case as well as the standards by which other offenses may be determined to be serious. The legislature also intends to clarify that a court may, to the extent permitted by federal law and required by the *Sell* decision, inquire into the civil commitment status of a defendant and may be told, if known." [2004 c 157 § 1.]

Severability—2004 c 157: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 157 § 7.]

Effective date—2004 c 157: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 157 § 8.]

Purpose—Construction—1999 c 13: "The purpose of this act is to make technical nonsubstantive changes to chapters 10.77 and 71.05 RCW. No provision of this act shall be construed as a substantive change in the provisions dealing with persons charged with crimes who are subject to evaluation under chapter 10.77 or 71.05 RCW." [1999 c 13 § 1.]

Effective dates—Severability—Intent—1998 c 297: See notes following RCW 71.05.010.

Additional notes found at www.leg.wa.gov

10.77.152 Conditional release—Application—County of origin. (1) In determining whether to support an application for conditional release on behalf of a person committed as criminally insane which would permit the person to reside outside of a state hospital, the secretary may not support a conditional release application to a location outside the person's county of origin unless it is determined by the secretary that the person's return to his or her county of origin would be inappropriate considering any court-issued protection orders, victim safety concerns, the availability of appropriate treatment, negative influences on the person, or the location of family or other persons or organizations offering support to the person. When the department assists in developing a placement under this section which is outside of the county of origin, and there are two or more options for placement, it shall endeavor to develop the placement in a manner that does not have a disproportionate effect on a single county.

(2) If the committed person is not conditionally released to his or her county of origin, the department shall provide the law and justice council of the county in which the person is conditionally released with a written explanation.

(3) For purposes of this section, the offender's county of origin means the county of the court which ordered the person's commitment. [2011 c 94 § 1.]

10.77.165 Escape or disappearance—Notification requirements. (1) In the event of an escape by a person committed under this chapter from a state facility or the disappearance of such a person on conditional release or other authorized absence, the superintendent shall provide notification of the person's escape or disappearance for the public's safety or to assist in the apprehension of the person.

(a) The superintendent shall notify:

(i) State and local law enforcement officers located in the city and county where the person escaped and in the city and county which had jurisdiction of the person on the date of the applicable offense;

(ii) Other appropriate governmental agencies; and

(iii) The person's relatives.

(b) The superintendent shall provide the same notification as required by (a) of this subsection to the following, if such notice has been requested in writing about a specific person committed under this chapter:

(i) The victim of the crime for which the person was convicted or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings if the person was charged with a violent offense; and

(iii) Any other appropriate persons.

(2) Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(3) The notice provisions of this section are in addition to those provided in RCW 10.77.205. [2011 c 305 § 6; 2010 c 28 § 1; 1993 c 31 § 8; 1990 c 3 § 107; 1989 c 420 § 10; 1983 c 122 § 3.]

Findings—2011 c 305: See note following RCW 74.09.295.

Additional notes found at www.leg.wa.gov

Chapter 10.82 RCW

COLLECTION AND DISPOSITION OF FINES AND COSTS

Sections

10.82.090 Interest on judgments—Disposition of nonrestitution interest.

10.82.090 Interest on judgments—Disposition of nonrestitution interest. (1) Except as provided in subsection (2) of this section, financial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. All nonrestitution interest retained by the court shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts.

(2) The court may, on motion by the offender, following the offender's release from total confinement, reduce or waive the interest on legal financial obligations levied as a result of a criminal conviction as follows:

(a) The court shall waive all interest on the portions of the legal financial obligations that are not restitution that accrued during the term of total confinement for the conviction giving rise to the financial obligations, provided the offender shows that the interest creates a hardship for the offender or his or her immediate family;

(b) The court may reduce interest on the restitution portion of the legal financial obligations only if the principal has been paid in full;

(c) The court may otherwise reduce or waive the interest on the portions of the legal financial obligations that are not restitution if the offender shows that he or she has personally made a good faith effort to pay and that the interest accrual is causing a significant hardship. For purposes of this section, "good faith effort" means that the offender has either (i) paid

the principal amount in full; or (ii) made at least fifteen monthly payments within an eighteen-month period, excluding any payments mandatorily deducted by the department of corrections;

(d) For purposes of (a) through (c) of this subsection, the court may reduce or waive interest on legal financial obligations only as an incentive for the offender to meet his or her legal financial obligations. The court may grant the motion, establish a payment schedule, and retain jurisdiction over the offender for purposes of reviewing and revising the reduction or waiver of interest.

(3) This section applies to persons convicted as adults or adjudicated in juvenile court. [2011 c 106 § 2; 2009 c 479 § 14; 2004 c 121 § 1; 1995 c 291 § 7; 1989 c 276 § 3.]

Finding—2011 c 106: "(1) The legislature finds that it is in the interest of the public to promote the reintegration into society of individuals convicted of crimes. Research indicates that legal financial obligations may constitute a significant barrier to successful reintegration. The legislature further recognizes that the accrual of interest on nonrestitution debt during the term of incarceration results in many individuals leaving prison with insurmountable debt. These circumstances make it less likely that restitution will be paid in full and more likely that former offenders and their families will remain in poverty. In order to foster reintegration, this act creates a mechanism for courts to eliminate interest accrued on nonrestitution debt during incarceration and improves incentives for payment of legal financial obligations.

(2) At the same time, the legislature believes that payment of legal financial obligations is an important part of taking personal responsibility for one's actions. The legislature therefore, supports the efforts of county clerks in taking collection action against those who do not make a good faith effort to pay." [2011 c 106 § 1.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

Chapter 10.88 RCW

UNIFORM CRIMINAL EXTRADITION ACT

Sections

10.88.300 Delivery of person in violation of RCW 10.88.290—Penalty.

10.88.300 Delivery of person in violation of RCW 10.88.290—Penalty. Any officer who shall deliver to the agent for extradition of the demanding state a person in his or her custody under the governor's warrant, in wilful [willful] disobedience to RCW 10.88.290, shall be guilty of a gross misdemeanor and, on conviction, shall be imprisoned in the county jail for up to three hundred sixty-four days, or be fined not more than one thousand dollars, or both. [2011 c 96 § 14; 2010 c 8 § 1073; 1971 ex.s. c 46 § 11.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 10.92 RCW

TRIBAL POLICE OFFICERS

Sections

10.92.020 Powers—Authority to act as general authority Washington peace officer—Public liability and property damage insurance—Training requirements—Issuance of citation, notice of infraction, or incident report—Jurisdiction—Civil liability—Sovereign tribal governments—Interlocal agreement.

10.92.020 Powers—Authority to act as general authority Washington peace officer—Public liability and property damage insurance—Training requirements—

Issuance of citation, notice of infraction, or incident report—Jurisdiction—Civil liability—Sovereign tribal governments—Interlocal agreement. (1) Tribal police officers under subsection (2) of this section shall be recognized and authorized to act as general authority Washington peace officers. A tribal police officer recognized and authorized to act as a general authority Washington peace officer under this section has the same powers as any other general authority Washington peace officer to enforce state laws in Washington, including the power to make arrests for violations of state laws.

(2) A tribal police officer may exercise the powers of law enforcement of a general authority Washington peace officer under this section, subject to the following:

(a) The appropriate sovereign tribal nation shall submit to the department of enterprise services proof of public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state. For purposes of determining adequacy of insurance liability, the sovereign tribal government must submit with the proof of liability insurance a copy of the interlocal agreement between the sovereign tribal government and the local governments that have shared jurisdiction under this chapter where such an agreement has been reached pursuant to subsection (10) of this section.

(i) Within the thirty days of receipt of the information from the sovereign tribal nation, the department of enterprise services shall either approve or reject the adequacy of insurance, giving consideration to the scope of the interlocal agreement. The adequacy of insurance under this chapter shall be subject to annual review by the department of enterprise services.

(ii) Each policy of insurance issued under this chapter must include a provision that the insurance shall be available to satisfy settlements or judgments arising from the tortious conduct of tribal police officers when acting in the capacity of a general authority Washington peace officer, and that to the extent of policy coverage neither the sovereign tribal nation nor the insurance carrier will raise a defense of sovereign immunity to preclude an action for damages under state or federal law, the determination of fault in a civil action, or the payment of a settlement or judgment arising from the tortious conduct.

(b) The appropriate sovereign tribal nation shall submit to the department of enterprise services proof of training requirements for each tribal police officer. To be authorized as a general authority Washington peace officer, a tribal police officer must successfully complete the requirements set forth under RCW 43.101.157. Any applicant not meeting the requirements for certification as a tribal police officer may not act as a general authority Washington peace officer under this chapter. The criminal justice training commission shall notify the department of enterprise services if:

(i) A tribal police officer authorized under this chapter as a general authority Washington state peace officer has been decertified pursuant to RCW 43.101.157; or

(ii) An appropriate sovereign tribal government is otherwise in noncompliance with RCW 43.101.157.

(3) A copy of any citation or notice of infraction issued, or any incident report taken, by a tribal police officer acting

in the capacity of a general authority Washington peace officer as authorized by this chapter must be submitted within three days to the police chief or sheriff within whose jurisdiction the action was taken. Any citation issued under this chapter shall be to a Washington court, except that any citation issued to Indians within the exterior boundaries of an Indian reservation may be cited to a tribal court. Any arrest made or citation issued not in compliance with this chapter is not enforceable.

(4) Any authorization granted under this chapter shall not in any way expand the jurisdiction of any tribal court or other tribal authority.

(5) The authority granted under this chapter shall be coextensive with the exterior boundaries of the reservation, except that an officer commissioned under this section may act as authorized under RCW 10.93.070 beyond the exterior boundaries of the reservation.

(6) For purposes of civil liability under this chapter, a tribal police officer shall not be considered an employee of the state of Washington or any local government except where a state or local government has deputized a tribal police officer as a specially commissioned officer. Neither the state of Washington and its individual employees nor any local government and its individual employees shall be liable for the authorization of tribal police officers under this chapter, nor for the negligence or other misconduct of tribal officers. The authorization of tribal police officers under this chapter shall not be deemed to have been a nondelegable duty of the state of Washington or any local government.

(7) Nothing in this chapter impairs or affects the existing status and sovereignty of those sovereign tribal governments whose traditional lands and territories lie within the borders of the state of Washington as established under the laws of the United States.

(8) Nothing in this chapter limits, impairs, or nullifies the authority of a county sheriff to appoint duly commissioned state or federally certified tribal police officers as deputy sheriffs authorized to enforce the criminal and traffic laws of the state of Washington.

(9) Nothing in this chapter limits, impairs, or otherwise affects the existing authority under state or federal law of state or local law enforcement officers to enforce state law within the exterior boundaries of an Indian reservation or to enter Indian country in fresh pursuit, as defined in RCW 10.93.120, of a person suspected of violating state law, where the officer would otherwise not have jurisdiction.

(10) An interlocal agreement pursuant to chapter 39.34 RCW is required between the sovereign tribal government and all local government law enforcement agencies that will have shared jurisdiction under this chapter prior to authorization taking effect under this chapter. Nothing in this chapter shall limit, impair, or otherwise affect the implementation of an interlocal agreement completed pursuant to chapter 39.34 RCW by July 1, 2008, between a sovereign tribal government and a local government law enforcement agency for cooperative law enforcement.

(a) Sovereign tribal governments that meet all of the requirements of subsection (2) of this section, but do not have an interlocal agreement pursuant to chapter 39.34 RCW and seek authorization under this chapter, may submit proof of liability insurance and training certification to the department

of enterprise services. Upon confirmation of receipt of the information from the department of enterprise services, the sovereign tribal government and the local government law enforcement agencies that will have shared jurisdiction under this chapter have one year to enter into an interlocal agreement pursuant to chapter 39.34 RCW. If the sovereign tribal government and the local government law enforcement agencies that will have shared jurisdiction under this chapter are not able to reach agreement after one year, the sovereign tribal governments and the local government law enforcement agencies shall submit to binding arbitration pursuant to chapter 7.04A RCW with the American arbitration association or successor agency for purposes of completing an agreement prior to authorization going into effect.

(b) For the purposes of (a) of this subsection, those sovereign tribal government and local government law enforcement agencies that must enter into binding arbitration shall submit to last best offer arbitration. For purposes of accepting a last best offer, the arbitrator must consider other interlocal agreements between sovereign tribal governments and local law enforcement agencies in Washington state, any model policy developed by the Washington association of sheriffs and police chiefs or successor agency, and national best practices. [2011 1st sp.s. c 43 § 519; 2008 c 224 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2008 c 224: See note following RCW 10.92.010.

Chapter 10.98 RCW

CRIMINAL JUSTICE INFORMATION ACT

Sections

10.98.140	Criminal justice forecasting—Sentencing records.
10.98.160	Procedures, development considerations—Washington integrated justice information board, review and recommendations.

10.98.140 Criminal justice forecasting—Sentencing records. (1) The section, the department, and the office of financial management shall be the primary sources of information for criminal justice forecasting. The information maintained by these agencies shall be complete, accurate, and sufficiently timely to support state criminal justice forecasting.

(2) The caseload forecast council shall keep records on all sentencings above or below the standard range defined by chapter 9.94A RCW. As a minimum, the records shall include the name of the offender, the crimes for which the offender was sentenced, the name and county of the sentencing judge, and the deviation from the standard range. Such records shall be made available to public officials upon request. [2011 1st sp.s. c 40 § 32; 1987 c 462 § 4; 1985 c 201 § 6; 1984 c 17 § 14.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

10.98.160 Procedures, development considerations—Washington integrated justice information board, review and recommendations. In the development and modification of the procedures, definitions, and reporting capabilities

of the section, the department, the office of financial management, and the responsible agencies and persons shall consider the needs of other criminal justice agencies such as the administrative office of the courts, local law enforcement agencies, local jails, the indeterminate sentence review board, the clemency board, prosecuting attorneys, and affected state agencies such as the office of financial management and legislative committees dealing with criminal justice issues. The Washington integrated justice information board shall review and provide recommendations to state justice agencies and the courts for development and modification of the statewide justice information network. [2011 1st sp.s. c 40 § 33; 2005 c 282 § 25; 2003 c 104 § 2; 1999 c 143 § 53; 1987 c 462 § 5; 1984 c 17 § 16.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Additional notes found at www.leg.wa.gov

Chapter 10.101 RCW

INDIGENT DEFENSE SERVICES

Sections

10.101.010 Definitions.

10.101.010 Definitions. The following definitions shall be applied in connection with this chapter:

(1) "Anticipated cost of counsel" means the cost of retaining private counsel for representation on the matter before the court.

(2) "Available funds" means liquid assets and disposable net monthly income calculated after provision is made for bail obligations. For the purpose of determining available funds, the following definitions shall apply:

(a) "Liquid assets" means cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in motor vehicles. A motor vehicle necessary to maintain employment and having a market value not greater than three thousand dollars shall not be considered a liquid asset.

(b) "Income" means salary, wages, interest, dividends, and other earnings which are reportable for federal income tax purposes, and cash payments such as reimbursements received from pensions, annuities, social security, and public assistance programs. It includes any contribution received from any family member or other person who is domiciled in the same residence as the defendant and who is helping to defray the defendant's basic living costs.

(c) "Disposable net monthly income" means the income remaining each month after deducting federal, state, or local income taxes, social security taxes, contributory retirement, union dues, and basic living costs.

(d) "Basic living costs" means the average monthly amount spent by the defendant for reasonable payments toward living costs, such as shelter, food, utilities, health care, transportation, clothing, loan payments, support payments, and court-imposed obligations.

(3) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind,

or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(4) "Indigent and able to contribute" means a person who, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are less than the anticipated cost of counsel but sufficient for the person to pay a portion of that cost. [2011 1st sp.s. c 36 § 12; 2010 1st sp.s. c 8 § 12; 1998 c 79 § 2; 1997 c 59 § 3; 1989 c 409 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Title 11

PROBATE AND TRUST LAW

Chapters

- 11.02** General provisions.
- 11.28** Letters testamentary and of administration.
- 11.68** Settlement of estates without administration.
- 11.86** Disclaimer of interests.
- 11.88** Guardianship—Appointment, qualification, removal of guardians.
- 11.92** Guardianship—Powers and duties of guardian or limited guardian.
- 11.94** Power of attorney.
- 11.96A** Trust and estate dispute resolution.
- 11.97** Effect of trust instrument.
- 11.98** Trusts.
- 11.100** Investment of trust funds.
- 11.103** Revocable trusts.
- 11.104A** Washington principal and income act of 2002.
- 11.108** Miscellaneous provisions for distributions made by a governing instrument.

Chapter 11.02 RCW

GENERAL PROVISIONS

Sections

11.02.005 Definitions and use of terms. (*Effective January 1, 2012.*)

11.02.005 Definitions and use of terms. (*Effective January 1, 2012.*) When used in this title, unless otherwise required from the context:

(1) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(2) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(3) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(4) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(5) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(6) "Heirs" denotes those persons, including the surviving spouse or surviving domestic partner, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

(8) "Issue" means all the lineal descendants of an individual. An adopted individual is a lineal descendant of each of his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant. A child conceived prior to the death of a parent but born after the death of the deceased parent is considered to be the surviving issue of the deceased parent for purposes of this title.

(9) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(10) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to

rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(11) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(12) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(13) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to a decedent, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the decedent who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the decedent but who left issue surviving the decedent; each share of a deceased person in the nearest degree shall be divided among those of the deceased person's issue who survive the decedent and have no ancestor then living who is in the line of relationship between them and the decedent, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the decedent.

(14) References to "section 2033A" of the Internal Revenue Code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title shall be deemed to refer to the comparable or corresponding provisions of section 2057 of the Internal Revenue Code, as added by section 6006(b) of the Internal Revenue Service Restructuring Act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" shall be deemed to mean the section 2057 deduction.

(15) "Settlor" has the same meaning as provided for "trustor" in this section.

(16) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(17) "Surviving spouse" or "surviving domestic partner" does not include an individual whose marriage to or state registered domestic partnership with the decedent has been terminated, dissolved, or invalidated unless, by virtue of a subsequent marriage or state registered domestic partnership, he or she is married to or in a domestic partnership with the decedent at the time of death. A decree of separation that does not terminate the status of spouses or domestic partners is not a dissolution or invalidation for purposes of this subsection.

(18) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(19) "Trustor" means a person, including a testator, who creates, or contributes property to, a trust.

(20) "Will" means an instrument validly executed as required by RCW 11.12.020.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also. [2011 c 327 § 1; 2008 c 6 § 901; 2007 c 475 § 1; 2005 c 97 § 1; 2001 c 320 § 1; 2000 c 130 § 1; 1999 c 358 § 20; 1998 c 292 § 117; 1997 c 252 § 1; 1994 c 221 § 1; 1993 c 73 § 1; 1985 c 30 § 4. Prior: 1984 c 149 § 4; 1977 ex.s. c 80 § 14; 1975-'76 2nd ex.s. c 42 § 23; 1965 c 145 § 11.02.005. Former RCW sections: Subd. (3), RCW 11.04.110; subd. (4), RCW 11.04.010; subd. (5), RCW 11.04.100; subd. (6), RCW 11.04.280; subd. (7), RCW 11.04.010; subd. (8) and (9), RCW 11.12.240; subd. (14) and (15), RCW 11.02.040.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

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

Severability—2007 c 475: See RCW 11.05A.903.

Effective date—2001 c 320: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 320 § 22.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Effect of decree of adoption: RCW 26.33.260.

Kindred of the half blood: RCW 11.04.035.

Additional notes found at www.leg.wa.gov

Chapter 11.28 RCW

LETTERS TESTAMENTARY AND OF ADMINISTRATION

Sections

11.28.237 Notice of appointment as personal representative, pendency of probate—Proof by affidavit. (*Effective January 1, 2012.*)

11.28.237 Notice of appointment as personal representative, pendency of probate—Proof by affidavit. (*Effective January 1, 2012.*) (1) Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his or her appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir, legatee and devisee of the estate and each beneficiary or transferee of a nonprobate asset of the decedent whose names and addresses are known to him or her, and proof of such mailing or service shall be made by affidavit and filed in the cause. If a trust is a legatee or devisee of the estate or a beneficiary or transferee of a nonprobate asset of the decedent, then notice to the trustee is sufficient.

(2) If the personal representative does not otherwise give notice to creditors under chapter 11.40 RCW within thirty days after appointment, the personal representative shall cause written notice of his or her appointment and the pendency of the probate proceedings to be mailed to the state of Washington department of social and health services' office of financial recovery, and proof of the mailing shall be made by affidavit and filed in the cause. [2011 c 327 § 2; 1997 c 252 § 85; 1994 c 221 § 24; 1977 ex.s. c 234 § 6; 1974 ex.s. c 117 § 30; 1969 c 70 § 2; 1965 c 145 § 11.28.237. Prior: 1955 c 205 § 13, part; RCW 11.76.040, part.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Additional notes found at www.leg.wa.gov

Chapter 11.68 RCW

SETTLEMENT OF ESTATES WITHOUT ADMINISTRATION

Sections

11.68.090 Powers of personal representative under nonintervention will—Scope—Relief from duties, restrictions, liabilities by will. (*Effective January 1, 2012.*)

11.68.090 Powers of personal representative under nonintervention will—Scope—Relief from duties, restrictions, liabilities by will. (*Effective January 1, 2012.*) (1) Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has under chapters 11.98, 11.100, and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Except as otherwise specifically provided in this title or by order of court, a personal representative acting under nonintervention powers may exercise the powers granted to a personal representative under chapter 11.76 RCW but is not obligated to comply with the duties imposed on personal representatives by that chapter. A party to such a transaction and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate.

(2) Except as otherwise provided in chapter 11.108 RCW or elsewhere in order to preserve a marital deduction from estate taxes, a testator may by a will relieve the personal representative from any or all of the duties, restrictions, and liabilities imposed: Under common law; by chapters 11.54, 11.56, 11.100, 11.102, and 11.104A RCW; or by RCW 11.28.270 and 11.28.280, 11.68.095, and 11.98.070. In addition, a testator may likewise alter or deny any or all of the privileges and powers conferred by this title, and may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by this title. If any common law or any statute referenced earlier in this subsection is in conflict with a will, the will controls whether or not specific reference is made in the will to this section. However, notwithstanding the rest of this subsection, a personal representative may not be relieved of the duty to act in good faith and with honest

judgment. [2011 c 327 § 3; 2003 c 254 § 3; 1997 c 252 § 66; 1988 c 29 § 3; 1985 c 30 § 7. Prior: 1984 c 149 § 10; 1974 ex.s. c 117 § 21.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.86 RCW

DISCLAIMER OF INTERESTS

Sections

11.86.031 Contents of disclaimer—Time and filing requirements—Fee.

11.86.031 Contents of disclaimer—Time and filing requirements—Fee. (1) The disclaimer must:

- (a) Be in writing;
- (b) Be signed by the disclaimant;
- (c) Identify the interest to be disclaimed; and
- (d) State the disclaimer and the extent thereof.

(2) The disclaimer must be delivered or mailed as provided in subsection (3) of this section at any time after the creation of the interest, but in all events by nine months after the latest of:

- (a) The date the beneficiary attains the age of twenty-one years;
- (b) The date of the transfer;
- (c) The date that the beneficiary is finally ascertained and the beneficiary's interest is indefeasibly vested; or
- (d) December 17, 2010, if the date of the transfer is the date of the death of the creator of the interest and the creator dies after December 31, 2009, and before December 18, 2010.

(3) The disclaimer shall be mailed by first-class mail, or otherwise delivered, to the creator of the interest, the creator's legal representative, or the holder of the legal title to the property to which the interest relates or, if the creator is dead and there is no legal representative or holder of legal title, to the person having possession of the property.

(4) If the date of the transfer is the date of the death of the creator of the interest, a copy of the disclaimer may be filed with the clerk of the probate court in which the estate of the creator is, or has been, administered, or, if no probate administration has been commenced, then with the clerk of the court of any county provided by law as the place for probate administration of such person, where it shall be indexed under the name of the decedent in the probate index upon the payment of a fee established under *RCW 36.18.016.

(5) The disclaimer of an interest in real property may be recorded, but shall constitute notice to all persons only from and after the date of recording. If recorded, a copy of the disclaimer shall be recorded in the office of the auditor in the county or counties where the real property is situated. [2011 c 113 § 3; 1995 c 292 § 4; 1989 c 34 § 3.]

***Reviser's note:** The fee specified in RCW 36.18.016 for the filing of a disclaimer was deleted by section 18, chapter 457, Laws of 2005.

Finding—Retroactive application—Application—Construction—Effective date—2011 c 113: See notes following RCW 11.108.090.

Chapter 11.88 RCW

GUARDIANSHIP—APPOINTMENT,
QUALIFICATION, REMOVAL OF GUARDIANS

Sections

11.88.020	Qualifications.
11.88.030	Petition—Contents—Hearing.
11.88.095	Disposition of guardianship petition.
11.88.125	Standby limited guardian or limited guardian.
11.88.127	Guardianship—Incapacitated person—Letters of guardianship.
11.88.140	Termination of guardianship or limited guardianship.

11.88.020 Qualifications. (1) Any suitable person over the age of eighteen years, or any parent under the age of eighteen years or, if the petition is for appointment of a professional guardian, any individual or guardianship service that meets any certification requirements established by the administrator for the courts, may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an incapacitated person. A financial institution subject to the jurisdiction of the department of financial institutions and authorized to exercise trust powers, and a federally chartered financial institution when authorized to do so, may act as a guardian of the estate of an incapacitated person without having to meet the certification requirements established by the administrator for the courts. No person is qualified to serve as a guardian who is

- (a) under eighteen years of age except as otherwise provided herein;
 - (b) of unsound mind;
 - (c) convicted of a felony or of a misdemeanor involving moral turpitude;
 - (d) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;
 - (e) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;
 - (f) a person whom the court finds unsuitable.
- (2) The professional guardian certification requirements required under this section shall not apply to a testamentary guardian appointed under RCW 11.88.080.

(3) If a guardian or limited guardian is not a certified professional guardian or financial institution authorized under this section, the guardian or limited guardian shall complete any standardized training video or web cast for lay guardians made available by the administrative office of the courts and the superior court where the petition is filed unless granted a waiver by the court under RCW 11.92.043 or 11.92.040. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(a) If a petitioner requests the appointment of a specific individual to act as a guardian or limited guardian, the petition for guardianship or limited guardianship shall include evidence of the successful completion of the required training video or web cast by the proposed guardian or limited guardian. The superior court may defer the completion of the training requirement to a date no later than ninety days after appointment if the petitioner requests expedited appointment due to emergent circumstances.

(b) If no person is identified to be appointed guardian or limited guardian at the time the petition is filed, then the court

shall require the completion of the required training video or web cast by a date no later than ninety days after the appointment. [2011 c 329 § 1; 1997 c 312 § 1; 1990 c 122 § 3; 1975 1st ex.s. c 95 § 3; 1971 c 28 § 4; 1965 c 145 § 11.88.020. Prior: 1917 c 156 § 196; RRS § 1566.]

Banks and trust companies may act as guardian: RCW 11.36.010.

Additional notes found at www.leg.wa.gov

11.88.030 Petition—Contents—Hearing. (1) Any person or entity may petition for the appointment of a qualified person, certified professional guardian, or financial institution authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

- (a) The name, age, residence, and post office address of the alleged incapacitated person;
 - (b) The nature of the alleged incapacity in accordance with RCW 11.88.010;
 - (c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;
 - (d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;
 - (e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;
 - (f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood, marriage, or state registered domestic partnership to the alleged incapacitated person;
 - (g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;
 - (h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;
 - (i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary;
 - (j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;
 - (k) The requested term of the limited guardianship to be included in the court's order of appointment; and
 - (l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.
- (2) The petition shall include evidence of successful completion of any training required under RCW 11.88.020 by the proposed guardian or limited guardian unless the peti-

tioner requests expedited appointment due to emergent circumstances.

(3)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(4) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(5)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE
PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE COUNTY SUPERIOR COURT BY IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED DOMESTIC PARTNERSHIP;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

(6) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date. [2011 c 329 § 2; 2009 c 521 § 36; 1996 c 249 § 8; 1995 c 297 § 1; 1991 c 289 § 2; 1990 c 122 § 4; 1977 ex.s. c 309 § 3; 1975 1st ex.s. c 95 § 4; 1965 c 145 § 11.88.030. Prior: 1927 c 170 § 1; 1917 c 156 § 197; RRS § 1567; prior: 1909 c 118 § 1; 1903 c 130 § 1.]

Intent—1996 c 249: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

11.88.095 Disposition of guardianship petition. (1) In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) The date the account or report shall be filed. The date of filing an account or report shall be within ninety days after the anniversary date of the appointment;

(d) A date for the court to review the account or report and enter its order. The court shall conduct the review within one hundred twenty days after the anniversary date of the appointment and follow the provisions of RCW 11.92.050. The court may review and approve an account or report without conducting a hearing;

(e) A directive to the clerk of court to issue letters of guardianship as specified in RCW 11.88.127;

(f) Whether the guardian ad litem shall continue acting as guardian ad litem;

(g) Whether a review hearing shall be required upon the filing of the inventory;

(h) Whether a review hearing is required upon filing the initial personal care plan;

(i) The authority of the guardian, if any, for investment and expenditure of the ward's estate;

(j) Names and addresses of those persons described in RCW 11.88.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship. The guardian, within ninety days from the date of the appointment, shall, in writing, notify the persons identified by the court of their right to request special notice of proceedings as described in RCW 11.92.150; and

(k) A guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

GUARDIANSHIP SUMMARY

Date Guardian Appointed:
 Due Date for Report and Accounting:
 Date of Next Review:
 Letters Expire On:
 Bond Amount: \$.
 Restricted Account Agreements Required:
 Due Date for Inventory:
 Due Date for Care Plan:

Incapacitated Person (IP) Guardian of: Estate Person

Name:	Name:
Address:	Address:
Phone:	Phone:
Facsimile:	Facsimile:

Interested Parties	Address	Relation to IP

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) Unless otherwise ordered, any powers of attorney or durable powers of attorney shall be revoked upon appointment of a guardian or limited guardian of the estate.

If there is an existing medical power of attorney, the court must make a specific finding of fact regarding the con-

tinued validity of that medical power of attorney before appointing a guardian or limited guardian for the person. [2011 c 329 § 4; 1995 c 297 § 5; 1991 c 289 § 6; 1990 c 122 § 9.]

Additional notes found at www.leg.wa.gov

11.88.125 Standby limited guardian or limited guardian.

(1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal incapacity of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby or limited guardian. Notice of the guardian’s designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(j). Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court’s appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(2) Letters of guardianship shall be issued to the standby guardian or limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100 as now or hereafter amended. The oath may be filed prior to the appointed guardian or limited guardian’s death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 through 11.88.110 as now or hereafter amended shall apply to standby guardians and limited guardians.

(3) In addition to the powers of a standby limited guardian or guardian as noted in subsection (1) of this section, the standby limited guardian or guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in *RCW 11.92.040 as now or hereafter amended, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. [2011 c 329 § 5; 2008 c 6 § 805; 1991 c 289 § 8; 1990 c 122 § 15; 1979 c 32 § 1; 1977 ex.s. c 309 § 10; 1975 1st ex.s. c 95 § 6.]

*Reviser’s note: RCW 11.92.040 was amended by 1990 c 122 § 20, deleting the language relating to informed consent to necessary medical procedures. For later enactment, see RCW 11.92.043.

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

Additional notes found at www.leg.wa.gov

11.88.127 Guardianship—Incapacitated person—Letters of guardianship. (1) A guardian or limited guardian may not act on behalf of the incapacitated person without

valid letters of guardianship. Upon appointment and fulfilling all legal requirements to serve, as set forth in the court’s order, the clerk shall issue letters of guardianship to a guardian or limited guardian appointed by the court. All letters of guardianship must be in the following form, or a substantially similar form:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

IN THE MATTER OF THE GUARDIANSHIP OF Incapacitated Person

Guardianship Cause No.

LETTERS OF GUARDIANSHIP OR LIMITED GUARDIANSHIP

Date letters expire

.....

THESE LETTERS OF GUARDIANSHIP PROVIDE OFFICIAL VERIFICATION OF THE FOLLOWING:

On the day of, 20 the Court appointed to serve as:

- Guardian of the Person Full Limited
Guardian of the Estate Full Limited

for, the incapacitated person, in the above referenced matter.

The Guardian has fulfilled all legal requirements to serve, including, but not limited to: Taking and filing the oath; filing any bond consistent with the court’s order; filing any blocked account agreement consistent with the court’s order; and appointing a resident agent for a nonresident guardian.

The Court, having found the Guardian duly qualified, now makes it known is authorized as the Guardian for designated in the Court’s order as referenced above.

The next filing and reporting deadline in this matter is on the ... day of

THESE LETTERS ARE NO LONGER VALID ON

These letters can only be renewed by a new court order. If the court grants an extension, new letters will be issued.

This matter is before the Honorable of Superior Court, the seal of the Court being affixed this ... of

State of Washington)
) ss.
County of

I,, Clerk of the Superior Court of said County and State, certify that this document represents true and correct Letters of Guardianship in the above entitled case, entered upon the record on this day of

These Letters remain in full force and effect until the date of expiration set forth above.

The seal of Superior Court has been affixed and witnessed by my hand this day of,

., Clerk of Superior Court

By, Deputy

.
(Signature of Deputy)

(2) The court shall order the clerk to issue letters of guardianship that are valid for a period of up to five years from the anniversary date of the appointment. When determining the time period for which the letters will be valid, the court must consider: The length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian. [2011 c 329 § 6.]

11.88.140 Termination of guardianship or limited guardianship. (1) TERMINATION WITHOUT COURT ORDER. A guardianship or limited guardianship is terminated:

(a) Upon the attainment of full and legal age, as defined in RCW 26.28.010 as now or hereafter amended, of any person defined as an incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding, subject to subsection (2) of this section;

(b) By an adjudication of capacity or an adjudication of termination of incapacity;

(c) By the death of the incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION. A guardianship for the benefit of a minor may be terminated upon the minor’s attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

(a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor’s funds in the guardian’s possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

(c) That the guardian has completed the administration of the minor’s estate and the guardianship is ready to be closed; and

(d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardian-

ship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian’s powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian’s lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

CAPTION OF CASE NOTICE OF FILING A
DECLARATION OF
COMPLETION OF
GUARDIANSHIP

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the day of, 19 ; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian’s lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an order terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or by personal service, not less than ten days before the hearing on the petition.

DATED this day of, 19

.
Guardian

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) TERMINATION ON COURT ORDER. A guardianship or limited guardianship may be terminated by court order after such notice as the court may require if the guardianship or limited guardianship is no longer necessary.

The guardian or limited guardian shall, within ninety days of the date of termination of the guardianship, unless the court orders a different deadline for good cause, prepare and file with the court a final verified account of administration. The final verified account of administration shall contain the same information as required for (a) an intermediate verified account of administration of the estate under RCW 11.92.040(2) and (b) an intermediate personal care status report under RCW 11.92.043(2).

(4) EFFECT OF TERMINATION. When a guardianship or limited guardianship terminates other than by the death of the incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the incapacitated person's estate shall be determined by the law of decedents' estates. [2011 c 329 § 7; 1991 c 289 § 9; 1990 c 122 § 17; 1977 ex.s. c 309 § 11; 1975 1st ex.s. c 95 § 16; 1965 c 145 § 11.88.140.]

Procedure on removal or death of guardian or limited guardian: RCW 11.88.120.

Settlement of estate upon termination: RCW 11.92.053.

Additional notes found at www.leg.wa.gov

Chapter 11.92 RCW

GUARDIANSHIP—POWERS AND DUTIES OF GUARDIAN OR LIMITED GUARDIAN

Sections

- 11.92.040 Duties of guardian or limited guardian in general.
- 11.92.043 Additional duties.
- 11.92.050 Intermediate accounts or reports—Hearing—Order.
- 11.92.053 Settlement of estate upon termination.

11.92.040 Duties of guardian or limited guardian in general. It shall be the duty of the guardian or limited guardian of an estate:

(1) To file within three months after the guardian's appointment a verified inventory of all the property of the incapacitated person which comes into the guardian's posses-

sion or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within ninety days after the anniversary date of the guardian's or limited guardian's appointment, and also within ninety days after termination of the appointment, unless the court for good cause orders a different deadline to file following termination, a written verified account of the administration for court approval, which account shall contain at least the following information:

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets;

(3) The court in its discretion may allow reports at intervals of up to thirty-six months for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian shall report any substantial change in income or assets of the guardianship estate within thirty days of the occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;

(4) All court orders approving accounts or reports filed by a guardian or limited guardian must contain a guardianship summary placed directly below the case caption or on a separate cover page in the following form, or a substantially similar form, containing the following information:

GUARDIANSHIP SUMMARY

- Date Guardian Appointed:
- Due Date for Report and Accounting:
- Date of Next Review:
- Letters Expire On:

Bond Amount: \$.....
 Restricted Account: Agree-
 ments Required:

Incapacitated Person Guardian of: [] Estate [] Person
 (IP)

Name:	Name:
Address:	Address:
Phone:	Phone:
Facsimile:	Facsimile:

Standby Guardian	Address	Relation to IP

Interested Parties	Address	Relation to IP

(5) To protect and preserve the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian’s or limited guardian’s report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

(6) To invest and reinvest the property of the incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the incapacitated person that a specific property be used by the incapacitated person rather than sold and the proceeds invested, the court may so order;

(7) To apply to the court no later than the filing of the inventory for an order authorizing disbursements on behalf of the incapacitated person. However, the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and cus-

tody of an incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an incapacitated person, or if the guardian or limited guardian of the estate has the care and custody of the incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof;

(8) To provide evidence of the guardian or limited guardian’s successful completion of any standardized training video or web cast for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (a) Was appointed prior to July 22, 2011; (b) is not a certified professional guardian or financial institution authorized under RCW 11.88.020; and (c) has not previously completed the requirements of RCW 11.88.020(3). The training video or web cast must be provided at no cost to the guardian or limited guardian. The superior court may, upon (i) petition by the guardian or limited guardian; or (ii) any other method as provided by local court rule: (A) For good cause, waive this requirement for guardians appointed prior to July 22, 2011. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts, the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or (B) extend the time period for completion of the training requirement for ninety days; and

(9) To provide evidence of the guardian or limited guardian’s successful completion of any additional or updated training video or web cast offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW 11.88.020. The training video or web cast must be provided at no cost to the guardian or limited guardian. [2011 c 329 § 9; 1991 c 289 § 10; 1990 c 122 § 20; 1985 c 30 § 9. Prior: 1984 c 149 § 12; 1979 c 32 § 2; 1977 ex.s. c 309 § 13; 1975 1st ex.s. c 95 § 20; 1965 c 145 § 11.92.040; prior: 1957 c 64 § 1; 1955 c 205 § 15; 1941 c 83 § 1; 1917 c 156 § 205; Rem. Supp. 1941 § 1575; prior: 1895 c 42 § 1; Code 1881 § 1614.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Compulsory school attendance law, duty to comply with: RCW 28A.225.010.

Disabled person, defined: RCW 11.88.010.

Additional notes found at www.leg.wa.gov

11.92.043 Additional duties. It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92.040, a report on the status of the incapacitated person, which shall include:

(a) The address and name of the incapacitated person and all residential changes during the period;

(b) The services or programs which the incapacitated person receives;

(c) The medical status of the incapacitated person;

(d) The mental status of the incapacitated person;

(e) Changes in the functional abilities of the incapacitated person;

(f) Activities of the guardian for the period;

(g) Any recommended changes in the scope of the authority of the guardian;

(h) The identity of any professionals who have assisted the incapacitated person during the period;

(i)(i) Evidence of the guardian or limited guardian's successful completion of any standardized training video or web cast for guardians or limited guardians made available by the administrative office of the courts and the superior court when the guardian or limited guardian: (A) Was appointed prior to July 22, 2011; (B) is not a certified professional guardian or financial institution authorized under RCW 11.88.020; and (C) has not previously completed the requirements of RCW 11.88.020(3). The training video or web cast must be provided at no cost to the guardian or limited guardian.

(ii) The superior court may, upon (A) petition by the guardian or limited guardian; or (B) any other method as provided by local court rule:

(I) For good cause, waive this requirement for guardians appointed prior to July 22, 2011. Good cause shall require evidence that the guardian already possesses the requisite knowledge to serve as a guardian without completing the training. When determining whether there is good cause to waive the training requirement, the court shall consider, among other facts, the length of time the guardian has been serving the incapacitated person; whether the guardian has timely filed all required reports with the court; whether the guardian is monitored by other state or local agencies; and whether there have been any allegations of abuse, neglect, or a breach of fiduciary duty against the guardian; or

(II) Extend the time period for completion of the training requirement for ninety days; and

(j) Evidence of the guardian or limited guardian's successful completion of any additional or updated training

video or web cast offered by the administrative office of the courts and the superior court as is required at the discretion of the superior court unless the guardian or limited guardian is a certified professional guardian or financial institution authorized under RCW 11.88.020. The training video or web cast must be provided at no cost to the guardian or limited guardian.

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(5) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

(a) Therapy or other procedure which induces convulsion;

(b) Surgery solely for the purpose of psychosurgery;

(c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW 71.05.217.

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040. [2011 c 329 § 3; 1991 c 289 § 11; 1990 c 122 § 21.]

Additional notes found at www.leg.wa.gov

11.92.050 Intermediate accounts or reports—Hearing—Order. (1) Upon the filing of any intermediate guardianship or limited guardianship account or report required by statute, or of any intermediate account or report required by court rule or order, the court shall enter an order settling the

guardianship account or report with regard to any receipts, expenditures, and investments made and acts done by the guardian or limited guardian to the date of the interim report.

(2) Upon such account or report being filed, the court may, in its discretion, set a date for the hearing and require the service of the guardian's report or account and a notice of the hearing as provided in RCW 11.88.040 as now or hereafter amended or as specified by the court; and, in the event a hearing is ordered, the court may also appoint a guardian ad litem, whose duty it shall be to investigate the account or report of the guardian or limited guardian of the estate and to advise the court thereon at the hearing, in writing.

(3) At the hearing on or upon the court's review of the account or report of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account or report.

(4) If a guardian or limited guardian fails to file the account or report or fails to appear at the hearing, the court shall enter an order for one or more of the following actions:

(a) Entering an order to show cause and requiring the guardian to appear at a show cause hearing. At the hearing the court may take action to protect the incapacitated person, including, but not limited to, removing the guardian or limited guardian pursuant to RCW 11.88.120 and appointing a successor;

(b) Directing the clerk to extend the letters, for good cause shown, for no more than ninety days, to permit the guardian to file his or her account or report;

(c) Requiring the completion of any approved guardianship training made available to the guardian by the court;

(d) Appointing a guardian ad litem subject to the requirements in RCW 11.88.090;

(e) Providing other and further relief the court deems just and equitable.

(5) If the court has appointed a guardian ad litem, the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after the incapacitated person attains his or her majority any such interim account may be challenged by the incapacitated person on the ground of fraud.

(6) The procedure established in this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under RCW 11.92.043. [2011 c 329 § 10; 1995 c 297 § 6; 1990 c 122 s 23; 1975 1st ex.s. c 95 s 21; 1965 c 145 s 11.92.050. Prior: 1943 c 29 s 1; Rem. Supp. 1943 s 1575-1.]

Additional notes found at www.leg.wa.gov

11.92.053 Settlement of estate upon termination.

Within ninety days, unless the court orders a different deadline for good cause, after the termination of a guardianship for any reason, the guardian or limited guardian of the estate shall petition the court for an order settling his or her account

as filed in accordance with RCW 11.92.040(2) with regard to any receipts, expenditures, and investments made and acts done by the guardian to the date of the termination. Upon the filing of the petition, the court shall set a date for the hearing of the petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to the petition or may appear at the time and place fixed for the hearing thereof and present his or her objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved, and the court may appoint a guardian ad litem to review the report.

At the hearing on the petition of the guardian or limited guardian, if the court is satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his or her trust with relation to the receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving the account, and the order shall be final and binding upon the incapacitated person, subject only to the right of appeal as upon a final order. However, within one year after the incompetent attains his or her majority any such account may be challenged by the incapacitated person on the ground of fraud. [2011 c 329 § 8; 1995 c 297 § 7; 1990 c 122 § 24; 1965 c 145 § 11.92.053.]

Administration of deceased incompetent's estate: RCW 11.88.150.

Procedure on removal or death of guardian—Delivery of estate to successor: RCW 11.88.120.

Termination of guardianship: RCW 11.88.140.

Additional notes found at www.leg.wa.gov

Chapter 11.94 RCW POWER OF ATTORNEY

Sections

11.94.050 Attorney or agent granted principal's powers—Powers to be specifically provided for—Transfer of resources by principal's attorney or agent. (*Effective January 1, 2012.*)

11.94.050 Attorney or agent granted principal's powers—Powers to be specifically provided for—Transfer of resources by principal's attorney or agent. (*Effective January 1, 2012.*) (1) Although a designated attorney-in-fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney-in-fact or agent shall have all the powers the principal would have if alive and competent, the attorney-in-fact or agent shall not have the power to make, amend, alter, or revoke the principal's wills or codicils, and shall not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's life insurance, annuity, or similar contract beneficiary designations, employee benefit plan beneficiary designations, trust agreements, registration of the principal's securities in beneficiary form, payable on death or transfer on death beneficiary designations, designation of persons as joint tenants with right of survivorship with the principal with respect to any of the principal's property, community property agreements, or any other provisions for nonprobate transfer at death contained in nontestamentary instruments described in

RCW 11.02.091; to make any gifts of property owned by the principal; to exercise the principal's rights to distribute property in trust or cause a trustee to distribute property in trust to the extent consistent with the terms of the trust agreement; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust; or to disclaim property.

(2) Nothing in subsection (1) of this section prohibits an attorney-in-fact or agent from making any transfer of resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy. [2011 c 327 § 4; 2001 c 203 § 12; 1989 c 87 § 1; 1985 c 30 § 29. Prior: 1984 c 149 § 30.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.96A RCW

TRUST AND ESTATE DISPUTE RESOLUTION

Sections

- 11.96A.030 Definitions. (*Effective January 1, 2012.*)
- 11.96A.050 Venue in proceedings involving probate or trust matters. (*Effective January 1, 2012.*)
- 11.96A.070 Statutes of limitation. (*Effective January 1, 2012.*)
- 11.96A.110 Notice in judicial proceedings under this title requiring notice. (*Effective January 1, 2012.*)
- 11.96A.120 Application of doctrine of virtual representation. (*Effective January 1, 2012.*)
- 11.96A.125 Mistake of fact or law in terms of will or trust—Judicial and nonjudicial reform. (*Effective January 1, 2012.*)
- 11.96A.127 Charitable dispositions by will or trust. (*Effective January 1, 2012.*)

11.96A.030 Definitions. (*Effective January 1, 2012.*)

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

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

(2) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills,

trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust;

(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset; and

(h) The reformation of a will or trust to correct a mistake under RCW 11.96A.125.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Notice agent" has the meanings given in RCW 11.42.010.

(5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular pro-

ceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

- (a) The trustor if living;
- (b) The trustee;
- (c) The personal representative;
- (d) An heir;
- (e) A beneficiary, including devisees, legatees, and trust beneficiaries;
- (f) The surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property;
- (g) A guardian ad litem;
- (h) A creditor;
- (i) Any other person who has an interest in the subject of the particular proceeding;
- (j) The attorney general if required under RCW 11.110.120;
- (k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney-in-fact;
- (l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;
- (m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; and
- (n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200.

(6) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(7) "Representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.

(8) "Trustee" means any acting and qualified trustee of the trust. [2011 c 327 § 5; 2009 c 525 § 20; 2008 c 6 § 927; 2006 c 360 § 10; 2002 c 66 § 2; 1999 c 42 § 104.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

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

Clarification of laws—Enforceability of act—Severability—2006 c 360: See notes following RCW 11.108.070.

11.96A.050 Venue in proceedings involving probate or trust matters. (Effective January 1, 2012.) (1) Venue for proceedings pertaining to trusts shall be:

(a) For testamentary trusts established under wills probated in the state of Washington, in the superior court of the county where the probate of the will is being administered or was completed or, in the alternative, the superior court of the county where any beneficiary of the trust entitled to notice

under RCW 11.97.010 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located; and

(b) For all other trusts, in the superior court of the county where any beneficiary of the trust entitled to notice under RCW 11.97.010 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located. If no county has venue for proceedings pertaining to a trust under the preceding sentence, then in any county.

(2) A party to a proceeding pertaining to a trust may request that venue be changed. If the request is made within four months of the giving of the first notice of a proceeding pertaining to the trust, except for good cause shown, venue must be moved to the county with the strongest connection to the trust as determined by the court, considering such factors as the residence of a beneficiary of the trust entitled to notice under RCW 11.97.010, the residence or place of business of a trustee, and the location of any real property that is an asset of the trust.

(3) Venue for proceedings subject to chapter 11.88 or 11.92 RCW shall be determined under the provisions of those chapters.

(4) Venue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent's property, including nonprobate assets, and any other matter not identified in subsection (1), (2), or (3) of this section, shall be in any county in the state of Washington that the petitioner selects. A party to a proceeding may request that venue be changed if the request is made within four months of the mailing of the notice of appointment and pendency of probate required by RCW 11.28.237, and except for good cause shown, venue must be moved as follows:

(a) If the decedent was a resident of the state of Washington at the time of death, to the county of the decedent's residence; or

(b) If the decedent was not a resident of the state of Washington at the time of death, to any of the following:

(i) Any county in which any part of the probate estate might be;

(ii) If there are no probate assets, any county where any nonprobate asset might be; or

(iii) The county in which the decedent died.

(5) Once letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title shall be had or made in the county in which such letters have been granted unless venue is moved as provided in subsection (4) of this section.

(6) Venue for proceedings pertaining to powers of attorney shall be in the superior court of the county of the principal's residence, except for good cause shown.

(7) If venue is moved, an action taken before venue is changed is not invalid because of the venue.

(8) Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court. [2011 c 327 § 6; 2001 c 203 § 10; 1999 c 42 § 202.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.96A.070 Statutes of limitation. (Effective January 1, 2012.) (1)(a) A beneficiary of an express trust may not commence a proceeding against a trustee for breach of trust more than three years after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence. A report that includes the following information is presumed to have provided such sufficient information regarding the existence of potential claims for breach of trust:

(i) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;

(ii) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;

(iii) The trustee's compensation for the period;

(iv) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;

(v) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;

(vi) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in RCW 11.98.078 or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;

(vii) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and

(viii) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.

(c) If (a) of this subsection does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

(i) The removal, resignation, or death of the trustee;

(ii) The termination of the beneficiary's interest in the trust; or

(iii) The termination of the trust.

(d) For purposes of this section, "express trust" does not include resulting trusts, constructive trusts, business trusts in which certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, trusts created in deposits in any financial institution under chapter 30.22 RCW, unless any such trust that is created in writing specifically incorporates this chapter in whole or in part.

(2) Except as provided in RCW 11.96A.250 with respect to special representatives, an action against a personal representative for alleged breach of fiduciary duty by an heir, leg-

atee, or other interested party must be brought before discharge of the personal representative.

(3) The legislature hereby confirms the long standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates. To further implement this policy, the legislature adopts the following statutory provisions in order to: (a) Encourage and facilitate the participation of qualified individuals as special representatives; (b) serve the public's interest in having a prompt and efficient resolution of matters involving trusts or estates; and (c) promote complete and final resolution of proceedings involving trusts and estates.

(i) Actions against a special representative must be brought before the earlier of:

(A) Three years from the discharge of the special representative as provided in RCW 11.96A.250; or

(B) The entry of an order by a court of competent jurisdiction under RCW 11.96A.240 approving the written agreement executed by all interested parties in accord with the provisions of RCW 11.96A.220.

(ii) If a legal action is commenced against the special representative after the expiration of the period during which claims may be brought against the special representative as provided in (c)(i) of this subsection, alleging property damage, property loss, or other civil liability caused by or resulting from an alleged act or omission of the special representative arising out of or by reason of the special representative's duties or actions as special representative, the special representative shall be indemnified: (A) From the assets held in the trust or comprising the estate involved in the dispute; and (B) by the persons bringing the legal action, for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action. To the extent possible, indemnification must be made first by the persons bringing the legal action, second from that portion of the trust or estate that is held for the benefit of, or has been distributed or applied to, the persons bringing the legal action, and third from the other assets held in the trust or comprising the estate involved in the dispute.

(4) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of a statute of limitations under subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, is not tolled as to an individual who had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding. [2011 c 327 § 7; 1999 c 42 § 204.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.96A.110 Notice in judicial proceedings under this title requiring notice. (Effective January 1, 2012.) (1) Subject to RCW 11.96A.160, in all judicial proceedings under this title that require notice, the notice must be personally served on or mailed to all parties or the parties' virtual representatives at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the rules of civil procedure. Notwithstanding the fore-

going, notice that is provided in an electronic transmission and electronically transmitted complies with this section if the party receiving notice has previously consented in a record delivered to the party giving notice to receiving notice by electronic transmission. Consent to receive notice by electronic transmission may be revoked at any time by a record delivered to the party giving notice. Consent is deemed revoked if the party giving notice is unable to electronically transmit two consecutive notices given in accordance with the consent.

(2) Proof of the service, mailing, or electronic delivery required in this section must be made by affidavit or declaration filed at or before the hearing.

(3) For the purposes of this title, the terms "electronic transmission" and "electronically transmitted" have the same meaning as set forth in RCW 23B.01.400. [2011 c 327 § 8; 1999 c 42 § 304.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.96A.120 Application of doctrine of virtual representation. (Effective January 1, 2012.) (1) With respect to a particular matter that affects a trust, probate estate, guardianship estate, or property subject to a power of attorney, in which the interests of such fiduciary estate and the beneficiaries are not in conflict:

(a) A guardian may represent and bind the estate that the guardian controls;

(b) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(c) A trustee may represent and bind the beneficiaries of the trust; and

(d) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(2) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and shall not be construed as limiting the application of that common law doctrine.

(3) Any notice requirement in this title is satisfied if:

(a) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to persons who comprise a certain class upon the happening of a certain event, notice may be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice, and the persons shall virtually represent all other members of the class;

(b) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or surviving domestic partner or to persons who are, or might be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice may be given to that living person, and the living person shall virtually represent the surviving spouse or surviving domestic partner, distributees, heirs, issue, or other kindred of the person;

(c) Except as otherwise provided in this subsection, where an interest in an estate, trust, or nonprobate asset or an

interest that may be affected by a power of attorney has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, notice may be given to the living person or persons who would take the interest upon the happening of the first event, and the living person or persons shall virtually represent the persons and classes of persons who might take on the happening of the additional future event; and

(d) The holder of a general power of appointment, exercisable either during the power holder's life or by will, or a limited power of appointment, exercisable either during the power holder's life or by will, that excludes as possible appointees only the power holder, his or her estate, his or her creditors, and the creditors of his or her estate, may accept notice and virtually represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power, to the extent there is no conflict of interest between the holder of the power of appointment and the persons represented with respect to the particular question or dispute.

(4) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party.

(5) An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise represented under this section. [2011 c 327 § 9; 2008 c 6 § 928; 2001 c 203 § 11; 1999 c 42 § 305.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

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

11.96A.125 Mistake of fact or law in terms of will or trust—Judicial and nonjudicial reform. (Effective January 1, 2012.) The terms of a will or trust, even if unambiguous, may be reformed by judicial proceedings or binding nonjudicial procedure under this chapter to conform the terms to the intention of the testator or trustor if it is proved by clear, cogent, and convincing evidence, or the parties to a binding nonjudicial agreement agree that there is clear, cogent, and convincing evidence, that both the intent of the testator or trustor and the terms of the will or trust were affected by a mistake of fact or law, whether in expression or inducement. [2011 c 327 § 11.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.96A.127 Charitable dispositions by will or trust. (Effective January 1, 2012.) (1) Except as otherwise provided in subsection (2) of this section, with respect to any charitable disposition made in a will or trust, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(a) The disposition does not fail, in whole or in part;

(b) The subject property does not revert to the alternative, residuary, or intestate heirs of the estate or, in the case of a trust, the trustor or the trustor's successors in interest; and

(c) The court may modify or terminate the trust by directing that the property be applied or distributed, in whole

or in part, in a manner consistent with the testator's or trustor's charitable purposes.

(2) A provision in the terms of a will or charitable trust that would result in distribution of the property to a noncharitable beneficiary prevails over the power of the court under subsection (1) of this section to modify or terminate the will provision or trust only if, when the provision takes effect:

(a) The property is to revert to the trustor and the trustor is still living; or

(b) Fewer than twenty-one years have elapsed since the following:

(i) In the case of a charitable disposition in trust, the date of the trust's creation or the date the trust became irrevocable; or

(ii) In the case of a charitable disposition in a will, the death of the testator, in the case of a charitable disposition in a will.

(3) For purposes of this title, a charitable purpose is one for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to a community. [2011 c 327 § 10.]

Application--Effective date—2011 c 327: See notes following RCW 11.103.020.

Chapter 11.97 RCW

EFFECT OF TRUST INSTRUMENT

Sections

11.97.010	Power of trustor—Trust provisions control. (<i>Effective January 1, 2012.</i>)
11.97.020	Trust term interpretation and property disposition—Rules of construction. (<i>Effective January 1, 2012.</i>)

11.97.010 Power of trustor—Trust provisions control. (*Effective January 1, 2012.*) (1) The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 6.32.250, 11.96A.190, 19.36.020, 11.98.200 through 11.98.240, 11.95.100 through 11.95.150, and chapter 11.103 RCW. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment or the duty to provide information to beneficiaries as required in this section. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(2) Within sixty days after the date of acceptance of the position of trustee of an irrevocable trust, or the date the trustee of a formerly revocable trust acquires knowledge that

the trust has become irrevocable, whether by the death of the trustor or otherwise, the trustee shall give notice of: (a) The existence of the trust, (b) the identity of the trustor or trustors, (c) the trustee's name, address, and telephone number, and (d) the right to request such information as is reasonably necessary to enable the notified person to enforce his or her rights under the trust, to all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust. If any such person is a minor and no guardian has been appointed for such person by any court, then such notice may be given to a parent of the person. If a person otherwise entitled to notice under this section is a charitable organization, and the charitable organization's only interest in the trust is a future interest that may be revoked, then such notice shall instead be given to the attorney general. A trustee who gives notice pursuant to this section satisfies the duty to inform the beneficiaries of the existence of the trust. The notice required under this subsection (2) applies only to irrevocable trusts created after December 31, 2011, and revocable trusts that become irrevocable after December 31, 2011, provided that all common law duties of a trustee to notify beneficiaries applicable to trusts created or that became irrevocable before such date are not affected.

(3) A trustee shall keep all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. A report that contains the following is presumed to satisfy the trustee's duty to keep such persons reasonably informed for the relevant period of trust administration:

(a) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;

(b) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;

(c) The trustee's compensation for the period;

(d) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;

(e) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;

(f) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in RCW 11.98.078 or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;

(g) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and

(h) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.

(4) Unless unreasonable under the circumstances, a trustee shall promptly respond to any beneficiary's request for information related to the administration of the trust.

(5) If a person entitled to notice under this section requests information reasonably necessary to enable the notified person to enforce his or her rights under the trust, then the trustee must provide such information within sixty days of receipt of such request. Delivery of the entire trust instrument to the persons entitled to notice under this section who request information concerning the terms of the trust reasonably necessary to enable the notified person to enforce his or her rights under the trust is deemed to satisfy the trustee's obligations under this subsection. [2011 c 327 § 12; 2003 c 254 § 4; 1993 c 339 § 1; 1985 c 30 § 38. Prior: 1984 c 149 § 64; 1959 c 124 § 2. Formerly RCW 30.99.020.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.97.020 Trust term interpretation and property disposition—Rules of construction. (*Effective January 1, 2012.*) The rules of construction that apply in this state to the interpretation of a will and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property. [2011 c 327 § 13.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Chapter 11.98 RCW

TRUSTS

Sections

11.98.005	Trust situs and governing law. (<i>Effective January 1, 2012.</i>)
11.98.008	Trust creation—Methods. (<i>Effective January 1, 2012.</i>)
11.98.009	Application of chapter. (<i>Effective January 1, 2012.</i>)
11.98.011	Trust creation—Requirements. (<i>Effective January 1, 2012.</i>)
11.98.012	Trust creation—Other jurisdictions. (<i>Effective January 1, 2012.</i>)
11.98.013	Trust creation—Allowable purposes. (<i>Effective January 1, 2012.</i>)
11.98.014	Trust creation—Oral trusts. (<i>Effective January 1, 2012.</i>)
11.98.015	Noncharitable trusts without ascertainable beneficiaries. (<i>Effective January 1, 2012.</i>)
11.98.039	Nonjudicial change of trustee—Judicial appointment or change of trustee—Liability and duties of successor fiduciary. (<i>Effective January 1, 2012.</i>)
11.98.045	Criteria for transfer of trust assets or administration. (<i>Effective January 1, 2012.</i>)
11.98.051	Nonjudicial transfer of trust assets or administration—Notice—Consent required. (<i>Effective January 1, 2012.</i>)
11.98.055	Judicial transfer of situs of trusts. (<i>Effective January 1, 2012.</i>)
11.98.070	Power of trustee. (<i>Effective January 1, 2012.</i>)
11.98.075	Certification of trust. (<i>Effective January 1, 2012.</i>)
11.98.078	Trustee duty of loyalty. (<i>Effective January 1, 2012.</i>)
11.98.085	Trustee—Breach of trust—Damages. (<i>Effective January 1, 2012.</i>)
11.98.105	Nonliability of third persons without knowledge of breach. (<i>Effective January 1, 2012.</i>)
11.98.107	Trustee exculpation. (<i>Effective January 1, 2012.</i>)
11.98.108	Nonliability of trustee—Beneficiary's consent, release, or ratification. (<i>Effective January 1, 2012.</i>)
11.98.145	Distribution upon termination. (<i>Effective January 1, 2012.</i>)

11.98.005 Trust situs and governing law. (*Effective January 1, 2012.*) (1) If provisions of a trust instrument designate Washington as the situs of the trust or designate Washington law to govern the trust or any of its terms, then the

situs of the trust is Washington provided that one of the following conditions is met:

(a) A trustee has a place of business in or a trustee is a resident of Washington; or

(b) More than an insignificant part of the trust administration occurs in Washington; or

(c) The trustor resides in Washington at the time situs is being established, or resided in Washington at the time the trust became irrevocable; or

(d) One or more of the beneficiaries resides in Washington; or

(e) An interest in real property located in Washington is an asset of the trust.

(2)(a) Unless the trust instrument designates a state other than Washington as the situs of the trust and does not expressly authorize transfer of situs, the trustee may register the trust as a Washington trust if any of the factors in subsection (1)(a) through (e) of this section are present. The trustee shall register the trust by filing with the clerk of the court in any county where venue lies for the trust under RCW 11.96A.050, a statement including the following information:

(i) The name and address of the trustee;

(ii) The date of the trust, name of the trustor, and name of the trust, if any;

(iii) The factor or factors listed in subsection (1)(a) through (e) of this section that are present for the trust and which qualify the trust for registration.

(b) Within five days of filing the registration with the court, the trustee shall mail a copy of the registration to each person who would be entitled to notice under RCW 11.97.010 and has not waived notice of the registration, in writing, filed in the cause, together with a notice that must be in substantially the same form as set forth in this section. Persons receiving such notice shall have thirty days from the date of filing the registration to file a petition in the court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and to serve a copy of such petition upon the trustee or the trustee's lawyer. If a petition objecting to the registration is filed within thirty days of the date of filing the registration, the trustee must request the court to fix a time and place for the hearing of the petition and notify by mail, personal service or electronic transmission, if a valid consent to electronic transmission is in effect under the terms of RCW 11.96A.110, all persons who were entitled to notice of the registration of the time and place of the hearing, not less than ten days before the hearing on the petition.

(c) Unless a person receiving notice of the registration files a petition with the court objecting to the registration within thirty days of the date of filing the registration, the registration shall be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington. After expiration of the thirty-day period following filing of the registration, the trustee may obtain a certificate of registration signed by the clerk, and issued under the seal of the court, which may be in the form specified in (d) of this subsection.

(d) Notice of registration and certificates of registration may be in the following form:

(i) Notice form:

NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A WASHINGTON TRUST

NOTICE IS GIVEN that the attached Registration of Trust was filed by the undersigned in the above-entitled court on the day of, 20. . . .; unless you file a petition in the above-entitled court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and serve a copy thereof upon the trustee or the trustee's lawyer, within thirty days after the date of the filing, the registration will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on the petition.

(ii) Certificate of Registration:

State of Washington, County of

In the superior court of the county of

Whereas, the attached Registration of Trust was filed with this court on, the attached Notice of Filing Registration of Trust and Affidavit of Mailing Notice of Filing Registration of Trust were filed with this court on, and no objections to such Registration have been filed with this court, the trust known as, under trust agreement dated, between as Trustor and as Trustee, is hereby registered as a Washington trust.

Witness my hand and the seal of said court this day of, 20

(3) If the instrument establishing a trust does not designate Washington as the situs or designate Washington law to apply to the trust, and the trustee of the trust has not registered the trust as allowed in subsection (2) of this section, the situs of the trust is Washington if the conditions specified in this subsection (3) are met.

(a) For a testamentary trust, the situs of the trust is Washington if:

(i) The will was admitted to probate in Washington; or

(ii) The will has not been admitted to probate in Washington, but any trustee of the trust resides or has a place of business in Washington, any beneficiary entitled to notice under RCW 11.97.010 resides in Washington, or any real property that is an asset of the trust is located in Washington.

(b) For an intervivos trust where the trustor is domiciled in Washington either when the trust becomes irrevocable or, in the case of a revocable trust, when judicial proceedings under chapter 11.96A RCW are commenced, the situs of the trust is Washington if:

(i) The trustor is living and Washington is the trustor's domicile or any of the trustees reside in or have a place of business in Washington; or

(ii) The trustor is deceased, situs has not previously been established by any court proceeding, and:

(A) The trustor's will was admitted to probate in Washington;

(B) The trustor's will was not admitted to probate in Washington, but any person entitled to notice under RCW 11.97.010 resides in Washington, any trustee resides or has a

place of business in Washington, or any real property that is an asset of the trust is located in Washington.

(c) If the situs of the trust is not determined under (a) or (b) of this subsection, the determination regarding the situs of the trust is a matter for purposes of RCW 11.96A.030. Whether Washington is the situs shall be determined by a court in a judicial proceeding conducted under RCW 11.96A.080 if:

(i) A trustee has a place of business in or a trustee is a resident of Washington; or

(ii) More than an insignificant part of the trust administration occurs in Washington; or

(iii) One or more of the beneficiaries resides in Washington; or

(iv) An interest in real property located in Washington is an asset of the trust.

(d) Determination of situs under (c) of this subsection (3) cannot be made by nonjudicial agreement under RCW 11.96A.220. [2011 c 327 § 22.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.008 Trust creation—Methods. (Effective January 1, 2012.) A trust may be created by:

(1) Transfer of property to another person as trustee during the trustor's lifetime or by will or other disposition taking effect upon the trustor's death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee; or

(3) Exercise of a power of appointment in favor of a trustee. [2011 c 327 § 15.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.009 Application of chapter. (Effective January 1, 2012.) Except as provided in this section, this chapter applies to express trusts executed by the trustor after June 10, 1959, and does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, trusts created in deposits in any financial institution pursuant to chapter 30.22 RCW, unless any such trust which is created in writing incorporates this chapter in whole or in part. [2011 c 327 § 14; 1985 c 30 § 40. Prior: 1984 c 149 § 67; 1983 c 3 § 49; 1959 c 124 § 1. Formerly RCW 30.99.010.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.011 Trust creation—Requirements. (Effective January 1, 2012.) (1) A trust is created only if:

(a) The trustor has capacity to create a trust;

(b) The trustor indicates an intention to create the trust;

(c) The trust has a definite beneficiary or is:

(i) A charitable trust;

(ii) A trust for the care of an animal, as provided in chapter 11.118 RCW; or

(iii) A trust for a noncharitable purpose, as provided in RCW 11.98.015;

(d) The trustee has duties to perform; and

(e) The same person is not the sole trustee and sole beneficiary.

(2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(3) A power in a trustee to select a beneficiary from an indefinite class is valid, except to the extent that the trustee may distribute trust property to himself or herself. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred. [2011 c 327 § 16.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.012 Trust creation—Other jurisdictions. (Effective January 1, 2012.) A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation or in the case of a revocable trust, at the time the trust became irrevocable:

(1) The trustor was domiciled, had a residence, or was a national;

(2) The trustee was domiciled or had a place of business; or

(3) Any trust property was located. [2011 c 327 § 17.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.013 Trust creation—Allowable purposes. (Effective January 1, 2012.) A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. [2011 c 327 § 18.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.014 Trust creation—Oral trusts. (Effective January 1, 2012.) Except as required by a statute other than this title, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear, cogent, and convincing evidence. [2011 c 327 § 19.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.015 Noncharitable trusts without ascertainable beneficiaries. (Effective January 1, 2012.) Except as otherwise provided in chapter 11.118 RCW or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for longer than the time period specified in RCW 11.98.130 as the period

during which a trust cannot be deemed to violate the rule against perpetuities;

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court; and

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the trustor, if then living, otherwise to the trustor's successors in interest. Successors in interest include the beneficiaries under the trustor's will, if the trustor has a will, or, in the absence of an effective will provision, the trustor's heirs. [2011 c 327 § 20.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.039 Nonjudicial change of trustee—Judicial appointment or change of trustee—Liability and duties of successor fiduciary. (Effective January 1, 2012.) (1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, shall give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to each adult distributee or permissible distributee of trust income or of trust principal or of both trust income and trust principal. If there are no such adults, no notice need be given. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument shall be entitled to act as trustee except for good cause or disqualification. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, then all parties with an interest in the trust may agree to a nonjudicial change of the trustee under RCW 11.96A.220. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) When there is a desire to name one or more cotrustees to serve with the existing trustee, then all parties with an interest in the trust may agree to the nonjudicial addition of one or more cotrustees under RCW 11.96A.220. The additional cotrustee shall serve as of the effective date of the cotrustee's appointment.

(4) Unless subsection (1), (2), or (3) of this section applies, any beneficiary of a trust, the trustor, if alive, or the trustee may petition the superior court having jurisdiction for

the appointment or change of a trustee or cotrustee under the procedures provided in RCW 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee becomes vacant; (b) upon filing of a petition of resignation by a trustee; or (c) for any other reasonable cause.

(5) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

(6) A change of trustee to a foreign trustee does not change the situs of the trust. Transfer of situs of a trust to another jurisdiction requires compliance with RCW 11.98.005 and RCW 11.98.045 through 11.98.055. [2011 c 327 § 21; 2005 c 97 § 13; 1999 c 42 § 618; 1985 c 30 § 44. Prior: 1984 c 149 § 72; 1959 c 124 § 5. Formerly RCW 30.99.050.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.045 Criteria for transfer of trust assets or administration. (Effective January 1, 2012.) (1) If a trust is a Washington trust under RCW 11.98.005, a trustee may transfer the situs of the trust to a jurisdiction other than Washington if the trust instrument so provides or in accordance with RCW 11.98.051 or 11.98.055.

(2) Transfer under this section is permitted only if:

(a) The transfer would facilitate the economic and convenient administration of the trust;

(b) The transfer would not materially impair the interests of the beneficiaries or others interested in the trust;

(c) The transfer does not violate the terms of the trust;

(d) The new trustee is qualified and able to administer the trust or such assets on the terms set forth in the trust; and

(e) The trust meets at least one condition for situs listed in RCW 11.98.005(1) with respect to the new jurisdiction.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section or RCW 11.98.051 or 11.98.055 shall not be construed to be doing a "trust business" as described in RCW 30.08.150(9). [2011 c 327 § 23; 1985 c 30 § 45. Prior: 1984 c 149 § 74.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.051 Nonjudicial transfer of trust assets or administration—Notice—Consent required. (Effective January 1, 2012.) (1) The trustee may transfer trust situs (a) in accordance with RCW 11.96A.220; or (b) by giving written notice to those persons entitled to notice as provided for under RCW 11.96A.110 and to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW not less than sixty days before initiating the transfer. The notice must:

(a) State the name and mailing address of the trustee;

(b) Include a copy of the governing instrument of the trust;

(c) Include a statement of assets and liabilities of the trust dated within ninety days of the notice;

(d) State the name and mailing address of the trustee to whom the trust will be transferred together with evidence that the trustee has agreed to accept the trust in the manner provided by law of the new situs. The notice must also contain a statement of the trustee's qualifications and the name of the court, if any, having jurisdiction of that trustee or in which a proceeding with respect to the administration of the trust may be heard;

(e) State the facts supporting the requirements of RCW 11.98.045(2);

(f) Advise the beneficiaries of the date, not less than sixty days after the giving of the notice, by which the beneficiary must notify the trustee of an objection to the proposed transfer; and

(g) Include a form on which the recipient may indicate consent or objection to the proposed transfer.

(2) If the date upon which the beneficiaries' right to object to the transfer expires without receipt by the trustee of any objection, the trustee may transfer the trust situs as provided in the notice. If the trust was registered under RCW 11.98.045(2), the trustee must file a notice of transfer of situs and termination of registration with the court of the county where the trust was registered.

(3) The authority of a trustee under this section to transfer a trust's situs terminates if a beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(4) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039. [2011 c 327 § 24; 1999 c 42 § 619; 1985 c 30 § 46. Prior: 1984 c 149 § 75.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.055 Judicial transfer of situs of trusts. (Effective January 1, 2012.) (1) Any trustee, beneficiary, or beneficiary representative may petition the superior court of the county of the situs of the trust for a transfer of the situs of a trust in accordance with RCW 11.96A.080 through 11.96A.200.

(2) At the conclusion of the hearing, if the court finds the requirements of RCW 11.98.045(2) have been satisfied, it may direct the transfer of the situs of a trust on such terms and conditions as it deems appropriate. The court in its discretion may provide for payment from the trust of reasonable fees and expenses for any party to the proceeding. Delivery of trust assets in accordance with the court's order is a full discharge of the trustee's duties in relation to all transferred property.

(3) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039. [2011 c 327 § 25; 1999 c 42 § 620; 1985 c 30 § 47. Prior: 1984 c 149 § 76.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.070 Power of trustee. (Effective January 1, 2012.) A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

(1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;

(2) Sell on credit;

(3) Grant, purchase or exercise options;

(4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;

(5) Deposit stock or other corporate securities with any protective or other similar committee;

(6) Assent to corporate sales, leases, and encumbrances;

(7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

(8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by subsection (31) of this section;

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

(10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

(11) Compromise or submit claims to arbitration;

(12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

(13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including

any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

(14) Determine the hazards to be insured against and maintain insurance for them;

(15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

(16)(a) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(i) Paying it to the beneficiary's guardian;

(ii) Paying it to the beneficiary's custodian under chapter 11.114 RCW, and, for that purpose, creating a custodianship;

(iii) If the trustee does not know of a guardian or custodian, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, with instructions to expend the funds on the beneficiary's behalf; or

(iv) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(b) If the trustee pays any amount to a third party under (a)(i) through (iii) of this subsection, the trustee has no further obligations regarding the amounts so paid;

(17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

(23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

(24) Limit participation in the management of any partnership and act as a limited or general partner;

(25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee and reimburse the trustee, with interest as appropriate, for expenses that were properly incurred in the administration of the trust;

(27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except that:

(a) A trustee may not delegate all of the trustee's duties and responsibilities;

(b) This power to employ and to delegate duties does not relieve the trustee of liability for such person's discretionary acts, that, if done by the trustee, would result in liability to the trustee;

(c) This power to employ and to delegate duties does not relieve the trustee of the duty to select and retain a person with reasonable care;

(d) The trustee, or a successor trustee, may sue the person to collect any damages suffered by the trust estate even though the trustee might not be personally liable for those damages, subject to the statutes of limitation that would have applied had the claim been one against the trustee who was serving when the act or failure to act occurred;

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

(29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

(30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

(31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this

determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;

(33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust;

(34)(a) Donate a qualified conservation easement, as defined by 26 U.S.C. Sec. 2031(c) of the federal internal revenue code, on any real property, or consent to the donation of a qualified conservation easement on any real property by a personal representative of an estate of which the trustee is a devisee, to obtain the benefit of the estate tax exclusion allowed under 26 U.S.C. Sec. 2031(c) of the federal internal revenue code or the deduction allowed under 26 U.S.C. Sec. 2055(f) of the federal internal revenue code as long as:

(i)(A) The governing instrument authorizes the donation of a qualified conservation easement on the real property; or

(B) Each beneficiary that may be affected by the qualified conservation easement consents to the donation under the provisions of chapter 11.96A RCW; and

(ii) The donation of a qualified conservation easement will not result in the insolvency of the decedent's estate.

(b) The authority granted under this subsection includes the authority to amend a previously donated qualified conservation easement, as defined under 26 U.S.C. Sec. 2031(c)(8)(B) of the federal internal revenue code, and to amend a previously donated unqualified conservation easement for the purpose of making the easement a qualified conservation easement under 26 U.S.C. Sec. 2031(c)(8)(B);

(35) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(36) Exercise elections with respect to federal, state, and local taxes;

(37) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(38) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

(39) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds. [2011 c 327 § 26; 2010 c 8 § 2091; 2002 c 66 § 1; 1997 c 252 § 75; 1989 c 40 § 7; 1985 c 30 § 50. Prior: 1984 c 149 § 80; 1959 c 124 § 7. Formerly RCW 30.99.070.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

11.98.075 Certification of trust. (Effective January 1, 2012.) (1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to

the person a certification of trust containing the following information:

(a) That the trust exists and the date the trust instrument was executed;

(b) The identity of the trustor;

(c) The identity and address of the currently acting trustee;

(d) Relevant powers of the trustee;

(e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(f) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and

(g) The name of the trust or the titling of the trust property.

(2) A certification of trust may be signed or otherwise authenticated by any trustee or by an attorney for the trust.

(3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(4) A certification of trust need not contain the dispositive terms of a trust.

(5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction or any other reasonable information.

(6) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages, including reasonable attorney fees, if the court determines that the person did not act in good faith in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust. [2011 c 327 § 31.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.078 Trustee duty of loyalty. (Effective January 1, 2012.) (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in RCW 11.98.090, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal

interests is voidable by a beneficiary affected by the transaction unless:

(a) The transaction was authorized by the terms of the trust;

(b) The transaction was approved by the court or approved in a nonjudicial binding agreement in compliance with RCW 11.96A.210 through 11.96A.250;

(c) The beneficiary did not commence a judicial proceeding within the time allowed by RCW 11.96A.070;

(d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with RCW 11.98.108; or

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3)(a) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be "otherwise affected" by a conflict between fiduciary and personal interests under this section if it is entered into by the trustee with:

(i) The trustee's spouse or registered domestic partner;

(ii) The trustee's descendants, siblings, parents, or their spouses or registered domestic partners;

(iii) An agent or attorney of the trustee; or

(iv) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(b) The presumption is rebutted if the trustee establishes that the conflict did not adversely affect the interests of the beneficiaries.

(4) A sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account that is voidable under subsection (2) of this section may be voided by a beneficiary without further proof.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 11.100 RCW. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the persons entitled under RCW 11.106.020 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(6) The following transactions, if fair to the beneficiaries, cannot be voided under this section:

(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) Payment of reasonable compensation to the trustee and any affiliate providing services to the trust, provided total compensation is reasonable;

(c) A transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) A deposit of trust money in a regulated financial-service institution operated by the trustee or its affiliate;

(e) A delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or

(f) Any loan from the trustee or its affiliate.

(7) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

(8) If a trust has two or more beneficiaries, the trustee shall act impartially in administering the trust and distributing the trust property, giving due regard to the beneficiaries' respective interests. [2011 c 327 § 32.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.085 Trustee—Breach of trust—Damages. (Effective January 1, 2012.) (1) A trustee who commits a breach of trust is liable for the greater of:

(a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(b) The profit the trustee made by reason of the breach.

(2) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received. [2011 c 327 § 33.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.105 Nonliability of third persons without knowledge of breach. (Effective January 1, 2012.) (1) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(3) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(4) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section. [2011 c 327 § 28.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.107 Trustee exculpation. (Effective January 1, 2012.) (1) An exculpatory term which was inserted as the result of an abuse of a fiduciary or confidential relationship between the trustor and the trustee is unenforceable.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the trustor. [2011 c 327 § 29.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.108 Nonliability of trustee—Beneficiary's consent, release, or ratification. (Effective January 1, 2012.) A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach. [2011 c 327 § 30.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.98.145 Distribution upon termination. (Effective January 1, 2012.) (1) Upon termination or partial termination of a trust, the trustee may send, by personal service, certified mail with return receipt requested, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, to the beneficiaries a proposed plan to distribute existing trust assets. The right of any beneficiary to object to the plan to distribute existing trust assets, including the right to object to nonpro rata distributions authorized under RCW 11.98.070(15), terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes. [2011 c 327 § 27.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Chapter 11.100 RCW

INVESTMENT OF TRUST FUNDS

Sections

11.100.090 Dealings with self or affiliate. (*Effective January 1, 2012.*)

11.100.090 Dealings with self or affiliate. (Effective January 1, 2012.) Unless the instrument creating the trust expressly provides to the contrary and except as authorized in RCW 11.98.078, any fiduciary in carrying out the obligations of the trust, may not buy or sell investments from or to himself, herself, or itself or any affiliated or subsidiary company or association. This section shall not be construed as prohibiting the trustee's powers under RCW 11.98.070(12). [2011 c 327 § 34; 1985 c 30 § 75. Prior: 1984 c 149 § 111; 1955 c 33 § 30.24.090; prior: 1947 c 100 § 9; 1941 c 41 § 17; Rem. Supp. 1947 § 3255-17. Formerly RCW 30.24.090.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Additional notes found at www.leg.wa.gov

Chapter 11.103 RCW REVOCABLE TRUSTS

Sections

11.103.020 Trustor capacity. (*Effective January 1, 2012.*)
 11.103.030 Revocation or amendment. (*Effective January 1, 2012.*)
 11.103.040 Trustor's powers—Powers of withdrawal. (*Effective January 1, 2012.*)
 11.103.050 Limitation on action contesting validity of revocable trust—Distribution of trust property. (*Effective January 1, 2012.*)

11.103.020 Trustor capacity. (Effective January 1, 2012.) The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. [2011 c 327 § 35.]

Application—2011 c 327: "Except as otherwise provided in this act:

(1) This act applies to all trusts created before, on, or after January 1, 2012;

(2) This act applies to all judicial proceedings concerning trusts commenced on or after January 1, 2012;

(3) Any rule of construction or presumption provided in this act applies to trust instruments executed before January 1, 2012, unless there is a clear indication of a contrary intent in the terms of the trust;

(4) An action taken before January 1, 2012, is not affected by this act; and

(5) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2012, that statute continues to apply to the right even if it has been repealed or superseded." [2011 c 327 § 40.]

Effective date—2011 c 327: "This act takes effect January 1, 2012." [2011 c 327 § 41.]

11.103.030 Revocation or amendment. (Effective January 1, 2012.) (1) Unless the terms of a trust expressly provide that the trust is revocable, the trustor may not revoke or amend the trust.

(2) If a revocable trust is created or funded by more than one trustor and unless the trust agreement provides otherwise:

(a) To the extent the trust consists of community property, the trust may be revoked by either spouse or either domestic partner acting alone but may be amended only by joint action of both spouses or both domestic partners;

(b) To the extent the trust consists of property other than community property, each trustor may revoke or amend the trust with regard to the portion of the trust property attributable to that trustor's contribution;

(c) The character of community property or separate property is unaffected by its transfer to and from a revocable trust; and

(d) Upon the revocation or amendment of the trust by fewer than all of the trustors, the trustee shall promptly notify the other trustors of the revocation or amendment.

(3) The trustor may revoke or amend a revocable trust:

(a) By substantial compliance with a method provided in the terms of the trust; or

(b)(i) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) A written instrument signed by the trustor evidencing intent to revoke or amend.

(ii) The requirements of chapter 11.11 RCW do not apply to revocation or amendment of a revocable trust under (b)(i) of this subsection.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the trustor directs.

(5) A trustor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the power, as provided in RCW 11.94.050(1) and to the extent consistent with or expressly authorized by the trust agreement.

(6) A guardian of the trustor may exercise a trustor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship pursuant to RCW 11.92.140.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the trustor or trustor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

(8) This section does not limit or affect operation of RCW 11.96A.220 through 11.96A.240. [2011 c 327 § 36.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.103.040 Trustor's powers—Powers of withdrawal. (*Effective January 1, 2012.*) While a trust is revocable by the trustor, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the trustor. If a revocable trust has more than one trustor, the duties of the trustee are owed to all of the trustors having the right to revoke the trust. [2011 c 327 § 37.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

11.103.050 Limitation on action contesting validity of revocable trust—Distribution of trust property. (*Effective January 1, 2012.*) (1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the trustor's death within the earlier of:

(a) Twenty-four months after the trustor's death; or

(b) Four months after the trustee sent to the person by personal service, mail, or in an electronic transmission if there is a consent of the recipient to electronic transmission

[2011 RCW Supp—page 208]

then in effect under the terms of RCW 11.96A.110, a notice with the information required in RCW 11.97.010, and notice of the time allowed for commencing a proceeding.

(2) Upon the death of the trustor of a trust that was revocable at the trustor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust, unless:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received. [2011 c 327 § 38.]

Application—Effective date—2011 c 327: See notes following RCW 11.103.020.

Chapter 11.104A RCW

WASHINGTON PRINCIPAL AND INCOME ACT OF 2002

Sections

11.104A.290 Income taxes.

11.104A.290 Income taxes. (1) A tax required to be paid by a trustee based on receipts allocated to income must be charged to income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal must be charged to principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be charged:

(a) To income to the extent that receipts from the entity are allocated only to income;

(b) To principal to the extent that receipts from the entity are allocated only to principal;

(c) Proportionately to income and principal to the extent that receipts from the entity are allocated to both income and principal;

(d) Otherwise to principal.

(4) Before applying subsections (1) through (3) of this section, the trustee must adjust income or principal receipts by the distributions to a beneficiary for which the trust receives an income tax deduction. [2011 c 33 § 1; 2002 c 345 § 505.]

Chapter 11.108 RCW

MISCELLANEOUS PROVISIONS FOR DISTRIBUTIONS MADE BY A GOVERNING INSTRUMENT

Sections

11.108.090 Generation-skipping transfer tax—Dispute resolution of federal law application.

11.108.090 Generation-skipping transfer tax—Dispute resolution of federal law application. The personal representative, trustee, or any affected beneficiary under a

will or trust may bring a proceeding under the trust and estate dispute resolution act in chapter 11.96A RCW, to determine whether the decedent intended that the references, presumptions, or rules of construction under RCW 11.108.080 be construed with respect to the federal law as it existed after December 31, 2009, including but not limited to the amendments made to federal law by the federal tax relief, unemployment insurance reauthorization, and job creation act of 2010, federal House Resolution No. 4853, P.L. 111-312. In making such determinations, extrinsic evidence may be considered, whether or not the governing instrument is found to be ambiguous, including but not limited to, information provided by the decedent to the decedent's attorney or personal representative. Such a proceeding must be commenced not later than two years following the death of the testator or grantor, and not thereafter. [2011 c 113 § 2; 2010 c 11 § 3.]

Finding—2011 c 113: "On December 17, 2010, the federal tax relief, unemployment insurance reauthorization, and job creation act of 2010, House Resolution No. 4853, P.L. 111-312, was enacted into law. Federal House Resolution No. 4853 amended the federal gift, estate, and generation-skipping transfer taxes by retroactively reinstating those taxes to January 1, 2010, with an increased applicable exemption amount per taxpayer of five million dollars. House Resolution No. 4853 also extended the time for making certain qualified disclaimers. In light of these changes in federal law, the legislature finds in order: To carry out the intent of decedents and grantors in the construction of wills, trusts, and other dispositive instruments; to continue the uniformity of the Washington disclaimer law with federal law; and to promote judicial economy in the administration of trusts and estates, it is necessary to amend certain time limitations and to clarify procedures to construe certain formula clauses that refer to federal estate, gift, and generation-skipping transfer tax rules applicable to estates of decedents dying after December 31, 2009, and prior to December 18, 2010." [2011 c 113 § 1.]

Retroactive application—2011 c 113: "The provisions of this act are effective retroactive to December 31, 2009, and apply to estates of decedents dying after December 31, 2009, and prior to December 18, 2010. Returns and payments for estate tax imposed under chapter 83.100 RCW will continue to be due and owing as provided in chapter 83.100 RCW and nothing in this act is intended to affect the application of that chapter to any taxpayer." [2011 c 113 § 4.]

Application—2011 c 113: "This act is remedial in nature and must be applied and construed liberally in order to carry out its intent." [2011 c 113 § 5.]

Effective date—2011 c 113: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2011]." [2011 c 113 § 7.]

Finding—Retroactive application—Application—Construction—Effective date—2010 c 11: See notes following RCW 11.108.080.

Title 12

DISTRICT COURTS—CIVIL PROCEDURE

Chapters

12.40 Small claims.

Chapter 12.40 RCW

SMALL CLAIMS

Sections

12.40.020 Action—Commencement—Fee—Surcharge.

12.40.020 Action—Commencement—Fee—Surcharge. (1) A small claims action shall be commenced by the plaintiff filing a claim, in the form prescribed by RCW

12.40.050, in the small claims department. A filing fee of fourteen dollars plus any surcharge authorized by RCW 7.75.035 shall be paid when the claim is filed. Any party filing a counterclaim, cross-claim, or third-party claim in such action shall pay to the court a filing fee of fourteen dollars plus any surcharge authorized by RCW 7.75.035.

(2) Until July 1, 2013, in addition to the fees required by this section, an additional surcharge of ten dollars shall be charged on the filing fees required by this section, of which seventy-five percent must be remitted to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county. [2011 1st sp.s. c 44 § 2; 2009 c 572 § 2; 2005 c 457 § 14; 1990 c 172 § 3; 1984 c 258 § 58; 1919 c 187 § 2; RRS § 1777-2.]

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

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

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

Additional notes found at www.leg.wa.gov

Title 13

JUVENILE COURTS AND JUVENILE OFFENDERS

Chapters

13.04 Basic juvenile court act.

13.32A Family reconciliation act.

13.34 Juvenile court act—Dependency and termination of parent-child relationship.

13.38 Indian child welfare act.

13.40 Juvenile justice act of 1977.

13.50 Keeping and release of records by juvenile justice or care agencies.

Chapter 13.04 RCW

BASIC JUVENILE COURT ACT

Sections

13.04.011 Definitions.

13.04.011 Definitions. For purposes of this title:

(1) "Adjudication" has the same meaning as "conviction" in RCW 9.94A.030, but only for the purposes of sentencing under chapter 9.94A RCW;

(2) Except as specifically provided in RCW 13.40.020 and chapters 13.24 and 13.34 RCW, "juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years;

(3) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.020;

(4) "Court" when used without further qualification means the juvenile court judge(s) or commissioner(s);

(5) "Parent" or "parents," except as used in chapter 13.34 RCW, means that parent or parents who have the right of legal custody of the child. "Parent" or "parents" as used in chapter 13.34 RCW, means the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings;

(6) "Custodian" means that person who has the legal right to custody of the child. [2011 c 330 § 2; 2010 c 150 § 4;

1997 c 338 § 6; 1992 c 205 § 119; 1979 c 155 § 1; 1977 ex.s. c 291 § 2.]

Intent—2011 c 330: "The Washington state legislature has consistently provided national leadership on safe housing and support to foster youth transitioning out of foster care. Since 2006, the legislature has addressed the needs of foster youth aging out of care with medicaid to twenty-one (2007), foster care to twenty-one (2006), the independent youth housing program (2007), and Washington's alignment with the federal fostering connections act (2009). As a result of this national leadership to provide safe and basic housing to youth aging out of foster care, the programs have demonstrated the significant cost-benefit to providing safe housing to our youth exiting foster care.

The United States congress passed the fostering connections to success and increasing adoptions act of 2008 in order to give states another financial tool to continue to provide foster care services to dependent youth who turn eighteen years old while in foster care. However, substantially declining revenues have resulted in markedly decreased funds for states to use to meet the federal requirements necessary to help these youth. Current fiscal realities require that the scope of programs must be narrowed.

The Washington state legislature intends to serve, within the resources available, the maximum number of foster youth who are legally dependent on the state and who reach the age of eighteen while still in foster care. The legislature intends to provide these youth continued foster care services to support basic and healthy transition into adulthood. The legislature recognizes the extremely poor outcomes of unsupported foster youth aging out of the foster care system and is committed to ensuring that those foster youth who engage in positive, age-appropriate activities receive support. It is the intent of the legislature to fully engage in the fostering connections act by providing support, including extended court supervision to foster youth pursuing a high school diploma or GED to age twenty-one with the goal of increasing support to all children up to age twenty-one who are eligible under the federal fostering connections to success act as resources become available." [2011 c 330 § 1.]

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

Additional notes found at www.leg.wa.gov

Chapter 13.32A RCW

FAMILY RECONCILIATION ACT

Sections

- 13.32A.082 Providing shelter to minor—Requirement to notify parent, law enforcement, or department. (*Effective July 1, 2012.*)
 13.32A.152 Child in need of services petition—Service on parents—Notice to department—Petitions regarding Indian children.

13.32A.082 Providing shelter to minor—Requirement to notify parent, law enforcement, or department. (*Effective July 1, 2012.*) (1) Any person who, without legal authorization, provides shelter to a minor and who knows at the time of providing the shelter that the minor is away from the parent's home without the permission of the parent, or other lawfully prescribed residence, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department.

The report may be made by telephone or any other reasonable means.

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

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from a lawfully prescribed residence or home without parental permission.

[2011 RCW Supp—page 210]

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family. [2011 c 151 § 1; 2010 c 229 § 2; 2000 c 123 § 10; 1996 c 133 § 14; 1995 c 312 § 34.]

Effective date—2011 c 151 § 1: "Section 1 of this act takes effect July 1, 2012." [2011 c 151 § 2.]

Findings—2010 c 229: "The legislature finds that youth services provide safety to youth on the streets and are a critical pathway to ensuring the youth's return home. Runaway youth are without protection, live under the threat of violence, and fall victim to predators who exploit their vulnerability. The policy of this state is to provide assistance to youth in crisis and to protect and preserve families. In order to effectively serve youth on the streets and promote their safe return home, shelters must have the time to establish and maintain an environment that facilitates open communication and trust.

The legislature also finds that parents of runaway youth have an interest in knowing their sons and daughters are safe in a shelter, rather than on the streets without protection. The legislature further finds that law enforcement and the department can notify a parent that the youth is safe, without disclosing the youth's location or compromising the ability of youth services providers to effectively assist youth in crisis." [2010 c 229 § 1.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

13.32A.152 Child in need of services petition—Service on parents—Notice to department—Petitions regarding Indian children. (1) Whenever a child in need of services petition is filed by: (a) A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW 13.32A.140, the filing party shall have a copy of the petition served on the parents of the youth. Service shall first be attempted in person and if unsuccessful, then by certified mail with return receipt.

(2) Whenever a child in need of services petition is filed by a youth or parent pursuant to RCW 13.32A.150, the court shall immediately notify the department that a petition has been filed.

(3) When a child in need of services petition is filed by the department, and the court or the petitioning party knows or has reason to know that an Indian child is involved, the provisions of chapter 13.38 RCW apply. [2011 c 309 § 21; 2004 c 64 § 5; 2000 c 123 § 18; 1996 c 133 § 21; 1995 c 312 § 4.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Additional notes found at www.leg.wa.gov

Chapter 13.34 RCW

JUVENILE COURT ACT— DEPENDENCY AND TERMINATION OF PARENT-CHILD RELATIONSHIP

Sections

- 13.34.030 Definitions.
 13.34.040 Petition to court to deal with dependent child—Application of federal Indian child welfare act.
 13.34.065 Shelter care—Hearing—Recommendation as to further need—Release.
 13.34.070 Summons when petition filed—Service procedure—Hearing, when—Contempt upon failure to appear—Required notice regarding Indian children.

- 13.34.105 Guardian ad litem—Duties—Immunity—Access to information.
- 13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Placement with relatives, foster family home, group care facility, or other suitable persons—Placement of an Indian child in out-of-home care—Contact with siblings.
- 13.34.132 Petition seeking termination of parent-child relationship—Requirements.
- 13.34.136 Permanency plan of care.
- 13.34.145 Permanency planning hearing—Purpose—Time limits—Goals—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights.
- 13.34.190 Order terminating parent and child relationship—Findings.
- 13.34.215 Petition reinstating terminated parental rights—Notice—Achievement of permanency plan—Effect of granting the petition—Hearing—Child support liability—Retroactive application—Limitation on liability.
- 13.34.250 Repealed.
- 13.34.260 Foster home placement—Parental preferences—Foster parent contact with birth parents encouraged. (*Effective January 1, 2012.*)
- 13.34.267 Extended foster care services—Postponement of dependency proceeding dismissal—Placement, care of youth—Appointment of counsel—Case plan—Dismissal.

13.34.030 Definitions. For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child," "juvenile," and "youth" means:

- (a) Any individual under the age of eighteen years; or
- (b) Any individual age eighteen to twenty-one years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031. A youth who remains dependent and who receives extended foster care services under RCW 74.13.031 shall not be considered a "child" under any other statute or for any other purpose.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

- (a) Has been abandoned;
- (b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;
- (c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circum-

stances which constitute a danger of substantial damage to the child's psychological or physical development; or

(d) Is receiving extended foster care services, as authorized by RCW 74.13.031.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Extended foster care services" means residential and other support services the department is authorized to provide under RCW 74.13.031.

(9) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(10) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(11) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(12) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(13) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(14) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(15) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(16) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(17) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in RCW 13.38.040.

(18) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(19) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract

with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020. [2011 1st sp.s. c 36 § 13. Prior: 2011 c 330 § 3; 2011 c 309 § 22; prior: 2010 1st sp.s. c 8 § 13; 2010 c 272 § 10; 2010 c 94 § 6; prior: 2009 c 520 § 21; 2009 c 397 § 1; 2003 c 227 § 2; 2002 c 52 § 3; 2000 c 122 § 1; 1999 c 267 § 6; 1998 c 130 § 1; 1997 c 386 § 7; 1995 c 311 § 23; 1994 c 288 § 1; 1993 c 241 § 1; 1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Purpose—2010 c 94: See note following RCW 44.04.280.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Legislative finding—1983 c 311: "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.]

Additional notes found at www.leg.wa.gov

13.34.040 Petition to court to deal with dependent child—Application of federal Indian child welfare act.

(1) Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child and requesting that the superior court deal with such child as provided in this chapter. There shall be no fee for filing such petitions.

(2) In counties having paid probation officers, these officers shall, to the extent possible, first determine if a petition is reasonably justifiable. Each petition shall be verified and contain a statement of facts constituting a dependency, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of the alleged dependent child.

(3) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in RCW 13.38.040. If the child is an Indian child chapter 13.38 RCW shall apply.

(4) Every order or decree entered under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.38 RCW does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.38 RCW does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the federal Indian child welfare act and chapter 13.38 RCW have been satisfied. [2011 c 309 § 23; 2004 c 64

§ 3; 2000 c 122 § 2; 1977 ex.s. c 291 § 32; 1913 c 160 § 5; RRS § 1987-5. Formerly RCW 13.04.060.]

Additional notes found at www.leg.wa.gov

13.34.065 Shelter care—Hearing—Recommendation as to further need—Release. (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) If it is likely that the child will remain in shelter care longer than seventy-two hours, in those areas in which child welfare services are being provided by a supervising agency, the supervising agency shall assume case management responsibilities of the case. The department or supervising agency shall submit a recommendation to the court as to the further need for shelter care in all cases in which the child will remain in shelter care longer than the seventy-two hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 is given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the department to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

(e) Is the placement proposed by the department or supervising agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in RCW 13.38.040, whether the provisions of the federal Indian child welfare act or chapter 13.38 RCW apply, and whether there is compliance with the federal Indian child welfare act and chapter 13.38 RCW, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The court must also determine whether placement with the relative or other suitable person is in the child's best interests. The relative or other suitable person must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department or supervising agency in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1). In determining placement, the court shall weigh the child's length of stay and attachment to the current provider in determining what is in the best interest of the child.

(d) If a relative or other suitable person is not available, the court shall order continued shelter care and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or supervising agency's case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which

a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (b) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2011 c 309 § 24. Prior: 2009 c 520 § 22; 2009 c 491 § 1; 2009 c 477 § 3; 2009 c 397 § 2; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

Findings—Intent—2009 c 477: See note following RCW 13.34.062.

Severability—2007 c 413: See note following RCW 13.34.215.

13.34.070 Summons when petition filed—Service procedure—Hearing, when—Contempt upon failure to appear—Required notice regarding Indian children. (1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally

disabled and not living at home, the notice shall be given to the child’s custodian as well as to the child’s parent. The developmentally disabled child shall not be required to appear unless requested by the court. When the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child’s parent, guardian, or legal custodian of his or her right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him or her to the place of shelter designated by the court.

(7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (5) or (6) of this section, and if the person fails to abide by the order, he or she may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

NOTICE:
VIOLATION OF THIS ORDER
IS SUBJECT TO PROCEEDING
FOR CONTEMPT OF COURT
PURSUANT TO RCW 13.34.070.

(8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party’s address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to the party personally or by mailing a copy

thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

(9) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department employee.

(10) Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child as defined in RCW 13.38.040 is involved, the petitioning party shall promptly provide notice to the child’s parent or Indian custodian and to the agent designated by the child’s Indian tribe to receive such notices. Notice shall comply with RCW 13.38.070. [2011 c 309 § 25; 2004 c 64 § 4; 2000 c 122 § 8; 1993 c 358 § 1; 1990 c 246 § 2; 1988 c 194 § 2; 1983 c 311 § 3; 1983 c 3 § 16; 1979 c 155 § 40; 1977 ex.s. c 291 § 35; 1913 c 160 § 6; RRS § 1987-6. Formerly RCW 13.04.070.]

Legislative finding—1983 c 311: See note following RCW 13.34.030. Additional notes found at www.leg.wa.gov

13.34.105 Guardian ad litem—Duties—Immunity—Access to information. (1) Unless otherwise directed by the court, the duties of the guardian ad litem for a child subject to a proceeding under this chapter, including an attorney specifically appointed by the court to serve as a guardian ad litem, include but are not limited to the following:

(a) To investigate, collect relevant information about the child’s situation, and report to the court factual information regarding the best interests of the child;

(b) To meet with, interview, or observe the child, depending on the child’s age and developmental status, and report to the court any views or positions expressed by the child on issues pending before the court;

(c) To monitor all court orders for compliance and to bring to the court’s attention any change in circumstances that may require a modification of the court’s order;

(d) To report to the court information on the legal status of a child’s membership in any Indian tribe or band;

(e) Court-appointed special advocates and guardians ad litem may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties;

(f) To represent and be an advocate for the best interests of the child;

(g) To inform the child, if the child is twelve years old or older, of his or her right to request counsel and to ask the child whether he or she wishes to have counsel, pursuant to RCW 13.34.100(6). The guardian ad litem shall report to the court that the child was notified of this right and indicate the child’s position regarding appointment of counsel. The guardian ad litem shall report to the court his or her independent recommendation as to whether appointment of counsel is in the best interest of the child; and

(h) In the case of an Indian child as defined in RCW 13.38.040, know, understand, and advocate the best interests of the Indian child.

(2) A guardian ad litem shall be deemed an officer of the court for the purpose of immunity from civil liability.

(3) Except for information or records specified in RCW 13.50.100(7), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

(4) A guardian ad litem may release confidential information, records, and reports to the office of the family and children's ombudsman for the purposes of carrying out its duties under chapter 43.06A RCW.

(5) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100. [2011 c 309 § 26; 2010 c 180 § 3; 2008 c 267 § 13; 2000 c 124 § 4; 1999 c 390 § 2; 1993 c 241 § 3.]

Findings—2010 c 180: See note following RCW 13.34.100.

Additional notes found at www.leg.wa.gov

13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Placement with relatives, foster family home, group care facility, or other suitable persons—Placement of an Indian child in out-of-home care—Contact with siblings. If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition that maintains the child in his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b)(i) Order the child to be removed from his or her home and into the custody, control, and care of a relative or other suitable person, the department, or a supervising agency for supervision of the child's placement. The court may not order an Indian child, as defined in RCW 13.38.040, to be removed from his or her home unless the court finds, by clear and convincing evidence including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(ii) The department or supervising agency has the authority to place the child, subject to review and approval by

the court (A) with a relative as defined in RCW 74.15.020(2)(a), (B) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child, or (C) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW.

(iii) The department may also consider placing the child, subject to review and approval by the court, with a person with whom the child's sibling or half-sibling is residing or a person who has adopted the sibling or half-sibling of the child being placed as long as the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be competent to provide care for the child.

(2) Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260.

(3) The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a), including a placement provided for in subsection (1)(b)(iii) of this section, when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child shall be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as described in subsection (1)(b) of this section. The court shall consider the child's existing relationships and attachments when determining placement.

(4) When placing an Indian child in out-of-home care, the department or supervising agency shall follow the placement preference characteristics in RCW 13.38.180.

(5) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(6) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a step-brother or step-sister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the step-sibling.

(7) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(8) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(9) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative or other suitable person, the child shall remain in foster care and the court shall direct the department or supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative or other person appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's or other suitable person's home, subject to review by the court. [2011 c 309 § 27; 2011 c 292 § 1; 2010 c 288 § 1. Prior: 2009 c 520 § 27; 2009 c 491 § 2; 2009 c 397 § 3; prior: 2007 c 413 § 6; 2007 c 412 § 2; 2003 c 227 § 3; 2002 c 52 § 5; 2000 c 122 § 15; prior: 1999 c 267 § 16; 1999 c 267

§ 9; 1999 c 173 § 3; prior: 1998 c 314 § 2; 1998 c 130 § 2; 1997 c 280 § 1; prior: 1995 c 313 § 2; 1995 c 311 § 19; 1995 c 53 § 1; 1994 c 288 § 4; 1992 c 145 § 14; 1991 c 127 § 4; prior: 1990 c 284 § 32; 1990 c 246 § 5; 1989 1st ex.s. c 17 § 17; prior: 1988 c 194 § 1; 1988 c 190 § 2; 1988 c 189 § 2; 1984 c 188 § 4; prior: 1983 c 311 § 5; 1983 c 246 § 2; 1979 c 155 § 46; 1977 ex.s. c 291 § 41.]

Reviser's note: This section was amended by 2011 c 292 § 1 and by 2011 c 309 § 27, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: "It is the intent of the legislature to recognize the importance of emotional ties formed by siblings with each other, especially in those circumstances which warrant court intervention into family relationships. It is the intent of the legislature to encourage the courts and public agencies which deal with families to acknowledge and give thoughtful consideration to the quality and nature of sibling relationships when intervening in family relationships. It is not the intent of the legislature to create legal obligations or responsibilities between siblings and other family members whether by blood or marriage, step families, foster families, or adopted families that do not already exist. Neither is it the intent of the legislature to mandate sibling placement, contact, or visitation if there is reasonable cause to believe that the health, safety, or welfare of a child or siblings would be jeopardized. Finally, it is not the intent of the legislature to manufacture or anticipate family relationships which do not exist at the time of the court intervention, or to disrupt already existing positive family relationships." [2003 c 227 § 1.]

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Legislative finding—1983 c 311: See note following RCW 13.34.030. Additional notes found at www.leg.wa.gov

13.34.132 Petition seeking termination of parent-child relationship—Requirements. A court may order that a petition seeking termination of the parent and child relationship be filed if the following requirements are met:

(1) The court has removed the child from his or her home pursuant to RCW 13.34.130;

(2) Termination is recommended by the department or the supervising agency;

(3) Termination is in the best interests of the child; and

(4) Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interests of the child. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court shall consider one or more of the following:

(a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and

9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(e) Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (a), (b), (c), or (d) of this subsection;

(f) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(g) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in RCW 13.38.040, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(h) An infant under three years of age has been abandoned;

(i) Conviction of the parent, when a child has been born of the offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest under RCW 9A.64.020. [2011 c 309 § 28; 2000 c 122 § 16.]

13.34.136 Permanency plan of care. (1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in RCW 13.38.040; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to *RCW 13.34.130(6), that a termination petition be filed, a specific

plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(v) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vi) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to *RCW 13.34.130(6), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan

of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with *RCW 13.34.130(4). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe. [2011 c 309 § 29.

Prior: 2009 c 520 § 28; 2009 c 234 § 5; prior: 2008 c 267 § 3; 2008 c 152 § 2; 2007 c 413 § 7; 2004 c 146 § 1; 2003 c 227 § 4; 2002 c 52 § 6; 2000 c 122 § 18.]

*Reviser's note: RCW 13.34.130 was amended by 2011 c 292 § 1, changing subsections (6) and (4) to subsections (8) and (6), respectively.

Findings—Intent—2008 c 152: "The legislature finds that meeting the needs of vulnerable children who enter the child welfare system includes protecting the child's right to a safe, stable, and permanent home where the child receives basic nurturing. The legislature also finds that according to measures of timely dependency case processing, many children's cases are not meeting the federal and state standards intended to promote child-centered decision making in dependency cases. The legislature intends to encourage a greater focus on children's developmental needs and to promote closer adherence to timeliness standards in the resolution of dependency cases." [2008 c 152 § 1.]

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

13.34.145 Permanency planning hearing—Purpose—Time limits—Goals—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights. (1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed. Every effort shall be made to provide stability in long-term placement, and to avoid disruption of placement, unless the child is being returned home or it is in the best interest of the child.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and

shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the department or supervising agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to department or supervising agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the department or supervising agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

(A) Being returned safely to his or her home;

(B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;

(C) Being placed for adoption;

(D) Being placed with a guardian;

(E) Being placed in the home of a fit and willing relative of the child; or

(F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

At this hearing, the court shall order the department or supervising agency to file a petition seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the

child. For purposes of this section, "good cause exception" includes but is not limited to the following: The child is being cared for by a relative; the department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home; or the department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests.

(c)(i) If the permanency plan identifies independent living as a goal, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care. The court will inquire whether the child has been provided information about extended foster care services.

(ii) The permanency plan shall also specifically identify the services, including extended foster care services, where appropriate, that will be provided to assist the child to make a successful transition from foster care to independent living.

(iii) The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(d) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall:

(i) Enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280, 13.34.215(6), and 13.34.096; and

(ii) If the department or supervising agency is recommending a placement other than the child's current placement with a foster parent, relative, or other suitable person, enter a finding as to the reasons for the recommendation for a change in placement.

(4) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the supervising agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(5) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(6) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(7) If the court orders the child returned home, casework supervision by the department or supervising agency shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(8) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (8) of this section are met.

(10) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the department or supervising agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(11) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(12) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter. [2011 c 330 § 6. Prior: 2009 c 520 § 30; 2009 c 491 § 4; 2009 c 477 § 4; 2008 c 152 § 3; 2007 c 413 § 9; 2003 c 227 § 6; prior: 2000 c 135 § 4; 2000 c 122 § 20; 1999 c 267 § 17; prior: 1998 c 314 § 3; 1998 c 130 § 3; prior: 1995 c 311 § 20; 1995 c 53 § 2; 1994 c 288 § 5; 1993 c 412 § 1; 1989 1st ex.s. c 17 § 18; 1988 c 194 § 3.]

Intent—2011 c 330: See note following RCW 13.04.011.

Findings—Intent—2009 c 477: See note following RCW 13.34.062.

Findings—Intent—2008 c 152: See note following RCW 13.34.136.

Severability—2007 c 413: See note following RCW 13.34.215.

Intent—2003 c 227: See note following RCW 13.34.130.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

13.34.190 Order terminating parent and child relationship—Findings. (1) Except as provided in subsection (2) of this section, after hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an order terminating all parental rights to a child only if the court finds that:

(a)(i) The allegations contained in the petition as provided in RCW 13.34.180(1) are established by clear, cogent, and convincing evidence; or

(ii) The provisions of RCW 13.34.180(1) (a), (b), (e), and (f) are established beyond a reasonable doubt and if so, then RCW 13.34.180(1) (c) and (d) may be waived. When an infant has been abandoned, as defined in RCW 13.34.030, and the abandonment has been proved beyond a reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or

(iii) The allegation under RCW 13.34.180(2) is established beyond a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and (f) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in RCW 13.34.132 exist; or

(iv) The allegation under RCW 13.34.180(3) is established beyond a reasonable doubt; and

(b) Such an order is in the best interests of the child.

(2) The provisions of chapter 13.38 RCW must be followed in any proceeding under this chapter for termination of the parent-child relationship of an Indian child as defined in RCW 13.38.040. [2011 c 309 § 30; 2010 c 288 § 2; 2000 c 122 § 26; 1998 c 314 § 5; 1993 c 412 § 3; 1992 c 145 § 15; 1990 c 284 § 33; 1979 c 155 § 48; 1977 ex.s. c 291 § 47.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Additional notes found at www.leg.wa.gov

13.34.215 Petition reinstating terminated parental rights—Notice—Achievement of permanency plan—Effect of granting the petition—Hearing—Child support liability—Retroactive application—Limitation on liability. (1) A child may petition the juvenile court to reinstate the previously terminated parental rights of his or her parent under the following circumstances:

(a) The child was previously found to be a dependent child under this chapter;

(b) The child's parent's rights were terminated in a proceeding under this chapter;

(c)(i) The child has not achieved his or her permanency plan; or

(ii) While the child achieved a permanency plan, it has not since been sustained;

(d) Three years have passed since the final order of termination was entered; and

(e) The child must be at least twelve years old at the time the petition is filed. Upon the child's motion for good cause shown, or on its own motion, the court may hear a petition filed by a child younger than twelve years old.

(2) If the child is eligible to petition the juvenile court under subsection (1) of this section and a parent whose rights have been previously terminated contacts the department or supervising agency or the child's guardian ad litem regarding reinstatement, the department or supervising agency or the guardian ad litem must notify the eligible child about his or her right to petition for reinstatement of parental rights.

(3) A child seeking to petition under this section shall be provided counsel at no cost to the child.

(4) The petition must be signed by the child in the absence of a showing of good cause as to why the child could not do so.

(5) If, after a threshold hearing to consider the parent's apparent fitness and interest in reinstatement of parental rights, the court finds by a preponderance of the evidence that the best interests of the child may be served by reinstatement of parental rights, the juvenile court shall order that a hearing on the merits of the petition be held.

(6) The court shall give prior notice for any proceeding under this section, or cause prior notice to be given, to the department or the supervising agency, the child's attorney, and the child. The court shall also order the department or supervising agency to give prior notice of any hearing to the child's former parent whose parental rights are the subject of the petition, any parent whose rights have not been terminated, the child's current foster parent, relative caregiver, guardian or custodian, and the child's tribe, if applicable.

(7) The juvenile court shall conditionally grant the petition if it finds by clear and convincing evidence that the child has not achieved his or her permanency plan and is not likely to imminently achieve his or her permanency plan and that reinstatement of parental rights is in the child's best interest. In determining whether reinstatement is in the child's best interest the court shall consider, but is not limited to, the following:

(a) Whether the parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and prior termination order;

(b) The age and maturity of the child, and the ability of the child to express his or her preference;

(c) Whether the reinstatement of parental rights will present a risk to the child's health, welfare, or safety; and

(d) Other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition.

(8) In determining whether the child has or has not achieved his or her permanency plan or whether the child is likely to achieve his or her permanency plan, the department or supervising agency shall provide the court, and the court shall review, information related to any efforts to achieve the permanency plan including efforts to achieve adoption or a permanent guardianship.

(9)(a) If the court conditionally grants the petition under subsection (7) of this section, the case will be continued for six months and a temporary order of reinstatement entered. During this period, the child shall be placed in the custody of the parent. The department or supervising agency shall develop a permanency plan for the child reflecting the plan to be reunification and shall provide transition services to the family as appropriate.

(b) If the child must be removed from the parent due to abuse or neglect allegations prior to the expiration of the conditional six-month period, the court shall dismiss the petition for reinstatement of parental rights if the court finds the allegations have been proven by a preponderance of the evidence.

(c) If the child has been successfully placed with the parent for six months, the court order reinstating parental rights remains in effect and the court shall dismiss the dependency.

(10) After the child has been placed with the parent for six months, the court shall hold a hearing. If the placement with the parent has been successful, the court shall enter a final order of reinstatement of parental rights, which shall

restore all rights, powers, privileges, immunities, duties, and obligations of the parent as to the child, including those relating to custody, control, and support of the child. The court shall dismiss the dependency and direct the clerk's office to provide a certified copy of the final order of reinstatement of parental rights to the parent at no cost.

(11) The granting of the petition under this section does not vacate or otherwise affect the validity of the original termination order.

(12) Any parent whose rights are reinstated under this section shall not be liable for any child support owed to the department pursuant to RCW 13.34.160 or Title 26 RCW or costs of other services provided to a child for the time period from the date of termination of parental rights to the date parental rights are reinstated.

(13) A proceeding to reinstate parental rights is a separate action from the termination of parental rights proceeding and does not vacate the original termination of parental rights. An order granted under this section reinstates the parental rights to the child. This reinstatement is a recognition that the situation of the parent and child have changed since the time of the termination of parental rights and reunification is now appropriate.

(14) This section is retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(15) The state, the department, the supervising agency, and its employees are not liable for civil damages resulting from any act or omission in the provision of services under this section, unless the act or omission constitutes gross negligence. This section does not create any duty and shall not be construed to create a duty where none exists. This section does not create a cause of action against the state, the department, the supervising agency, or its employees concerning the original termination. [2011 c 292 § 2; 2010 c 180 § 4; 2009 c 520 § 36; 2008 c 267 § 1; 2007 c 413 § 1.]

Findings—2010 c 180: See note following RCW 13.34.100.

Severability—2007 c 413: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 413 § 13.]

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

13.34.260 Foster home placement—Parental preferences—Foster parent contact with birth parents encouraged. (Effective January 1, 2012.) (1) In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child with a relative or other suitable person pursuant to RCW 13.34.130. Preferences such as family constellation, sibling relationships, ethnicity, and religion shall be considered when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and shall be integrated through the foster care team.

(2) When a child is placed in out-of-home care, relatives, other suitable persons, and foster parents are encouraged to:

(a) Provide consultation to the foster care team based upon their experience with the child placed in their care;

(b) Assist the birth parents by helping them understand their child's needs and correlating appropriate parenting responses;

(c) Participate in educational activities, and enter into community-building activities with birth families and other foster families;

(d) Transport children to family time visits with birth families and assist children and their families in maximizing the purposefulness of family time.

(3) For purposes of this section:

(a) "Foster care team" means the relative, other suitable person, or foster parent currently providing care, the currently assigned department employee, and the parent or parents; and

(b) "Birth family" means the persons described in RCW 74.15.020(2)(a). [2011 c 89 § 5; 2009 c 491 § 5; 2003 c 226 § 2; 2002 c 52 § 7; 2000 c 122 § 32; 1990 c 284 § 25.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Findings—Intent—2003 c 226: "The legislature finds that a large group of children spend a significant part of their lives in foster care. Each individual connected to a child in an out-of-home placement must have an abiding appreciation of the seriousness of the child's separation from his or her family and the past, whether that separation is short, long, or permanent in nature. It is the intent of the legislature to recognize and honor the history and the family connections that each child brings to an out-of-home placement.

The legislature finds that creating and sanctioning a connection between a child's birth parents and foster family, when appropriate, can result in better relationships among birth families, children, foster families, and social workers. Creating and sanctioning this connection can result in greater foster placement stability and fewer disruptions for children, as well as greater satisfaction for foster parents and social workers." [2003 c 226 § 1.]

Intent—2002 c 52: See note following RCW 13.34.025.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

13.34.267 Extended foster care services—Postponement of dependency proceeding dismissal—Placement, care of youth—Appointment of counsel—Case plan—Dismissal. (1) In order to facilitate the delivery of extended foster care services, the court shall postpone for six months the dismissal of a dependency proceeding for any child who is a dependent child in foster care at the age of eighteen years and who, at the time of his or her eighteenth birthday, is enrolled in a secondary education program or a secondary education equivalency program. The six-month postponement under this subsection is intended to allow a reasonable window of opportunity for an eligible youth who reaches the age of eighteen to request extended foster care services from the department or supervising agency. At the end of the six-month period, the court shall dismiss the dependency if the youth has not requested extended foster care services from the department. Until the youth requests to participate in the extended foster care program, the department is relieved of supervisory responsibility for the youth.

(2) A youth receiving extended foster care services is a party to the dependency proceeding. The youth's parent or

guardian shall be dismissed from the dependency proceeding when the youth reaches the age of eighteen years.

(3) The court shall order a youth participating in extended foster care services to be under the placement and care authority of the department, subject to the youth's continuing agreement to participate in extended foster care services.

(4) The court shall appoint counsel to represent a youth, as defined in RCW 13.34.030(2)(b), in dependency proceedings under this section.

(5) The case plan for and delivery of services to a youth receiving extended foster care services is subject to the review requirements set forth in RCW 13.34.138 and 13.34.145, and should be applied in a developmentally appropriate manner, as they relate to youth age eighteen to twenty-one years. Additionally, the court shall consider:

(a) Whether the youth is safe in his or her placement;

(b) Whether the youth continues to be eligible for extended foster care services;

(c) Whether the current placement is developmentally appropriate for the youth;

(d) The youth's development of independent living skills; and

(e) The youth's overall progress toward transitioning to full independence and the projected date for achieving such transition.

(6) Prior to the hearing, the youth's attorney shall indicate whether there are any contested issues and may provide additional information necessary for the court's review.

(7) Upon the request of the youth, or when the youth is no longer eligible to receive extended foster care services according to rules adopted by the department, the court shall dismiss the dependency. [2011 c 330 § 7.]

Intent—2011 c 330: See note following RCW 13.04.011.

Chapter 13.38 RCW

INDIAN CHILD WELFARE ACT

Sections

13.38.010	Short title.
13.38.020	Application.
13.38.030	Findings and intent.
13.38.040	Definitions.
13.38.050	Determination of Indian status.
13.38.060	Jurisdiction.
13.38.070	Notice—Procedures—Determination of Indian status.
13.38.080	Transfer of jurisdiction.
13.38.090	Right to intervene.
13.38.100	Full faith and credit.
13.38.110	Right to counsel.
13.38.120	Right to examine reports, other documents.
13.38.130	Involuntary foster care placement, termination of parental rights—Determination—Qualified expert witness.
13.38.140	Emergency removal or placement of Indian child—Notice.
13.38.150	Consent to foster care placement or termination of parental rights—Withdrawal.
13.38.160	Improper removal of Indian child.
13.38.170	Removal of Indian child from adoptive or foster care placement.
13.38.180	Placement preferences.
13.38.190	Review of cases—Standards and procedures—Compliance.

13.38.010 Short title. This chapter shall be known and cited as the "Washington state Indian child welfare act." [2011 c 309 § 1.]

13.38.020 Application. This chapter shall apply in all child custody proceedings as that term is defined in this chapter. Whenever there is a conflict between chapter 13.32A, 13.34, 13.36, 26.10, or 26.33 RCW, the provisions of this chapter shall apply. [2011 c 309 § 2.]

13.38.030 Findings and intent. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe. Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian child welfare act and in this chapter, the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in this chapter. The legislature further finds that where placement away from the parent or Indian custodian is necessary for the child's safety, the state is committed to a placement that reflects and honors the unique values of the child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the child's tribe and tribal community.

It is the intent of the legislature that this chapter is a step in clarifying existing laws and codifying existing policies and practices. This chapter shall not be construed to reject or eliminate current policies and practices that are not included in its provisions.

The legislature further intends that nothing in this chapter is intended to interfere with policies and procedures that are derived from agreements entered into between the department and a tribe or tribes, as authorized by section 109 of the federal Indian child welfare act. The legislature finds that this chapter specifies the minimum requirements that must be applied in a child custody proceeding and does not prevent the department from providing a higher standard of protection to the right of any Indian child, parent, Indian custodian, or Indian child's tribe.

It is also the legislature's intent that the department's policy manual on Indian child welfare, the tribal-state agreement, and relevant local agreements between individual federally recognized tribes and the department should serve as persuasive guides in the interpretation and implementation of the federal Indian child welfare act, this chapter, and other relevant state laws. [2011 c 309 § 3.]

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

(1) "Active efforts" means the following:

(a) In any foster care placement or termination of parental rights proceeding of an Indian child under chapter 13.34 RCW and this chapter where the department or a supervising agency as defined in RCW 74.13.020 has a statutory or contractual duty to provide services to, or procure services for, the parent or parents or Indian custodian, or is providing services to a parent or parents or Indian custodian pursuant to a disposition order entered pursuant to RCW 13.34.130, the department or supervising agency shall make timely and diligent

efforts to provide or procure such services, including engaging the parent or parents or Indian custodian in reasonably available and culturally appropriate preventive, remedial, or rehabilitative services. This shall include those services offered by tribes and Indian organizations whenever possible. At a minimum "active efforts" shall include:

(i) In any dependency proceeding under chapter 13.34 RCW seeking out-of-home placement of an Indian child in which the department or supervising agency provided voluntary services to the parent, parents, or Indian custodian prior to filing the dependency petition, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs to prevent the breakup of the family beyond simply providing referrals to such services.

(ii) In any dependency proceeding under chapter 13.34 RCW, in which the petitioner is seeking the continued out-of-home placement of an Indian child, the department or supervising agency must show to the court that it has actively worked with the parent, parents, or Indian custodian in accordance with existing court orders and the individual service plan to engage them in remedial services and rehabilitative programs to prevent the breakup of the family beyond simply providing referrals to such services.

(iii) In any termination of parental rights proceeding regarding an Indian child under chapter 13.34 RCW in which the department or supervising agency provided services to the parent, parents, or Indian custodian, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs ordered by the court or identified in the department or supervising agency's individual service and safety plan beyond simply providing referrals to such services.

(b) In any foster care placement or termination of parental rights proceeding in which the petitioner does not otherwise have a statutory or contractual duty to directly provide services to, or procure services for, the parent or Indian custodian, "active efforts" means a documented, concerted, and good faith effort to facilitate the parent's or Indian custodian's receipt of and engagement in services capable of meeting the criteria set out in (a) of this subsection.

(2) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian child welfare act, this chapter, and other applicable law, that are designed to accomplish the following: (a) Protect the safety, well-being, development, and stability of the Indian child; (b) prevent the unnecessary out-of-home placement of the Indian child; (c) acknowledge the right of Indian tribes to maintain their existence and integrity which will promote the stability and security of their children and families; (d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community; and (e) in a proceeding under this chapter where out-of-home placement is necessary, to prioritize placement of the Indian child in accordance with the placement preferences of this chapter.

(3) "Child custody proceeding" includes:

(a) "Foster care placement" which means any action removing an Indian child from his or her parent or Indian cus-

todian for temporary placement in a foster home, institution, or with a relative, guardian, conservator, or suitable other person where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) "Termination of parental rights" which means any action resulting in the termination of the parent-child relationship;

(c) "Preadoptive placement" which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement; and

(d) "Adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

These terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a dissolution proceeding of custody to one of the parents.

(4) "Court of competent jurisdiction" means a federal court, or a state court that entered an order in a child custody proceeding involving an Indian child, as long as the state court had proper subject matter jurisdiction in accordance with this chapter and the laws of that state, or a tribal court that had or has exclusive or concurrent jurisdiction pursuant to 25 U.S.C. Sec. 1911.

(5) "Department" means the department of social and health services and any of its divisions. "Department" also includes supervising agencies as defined in *RCW 74.13.020(12) with which the department entered into a contract to provide services, care, placement, case management, contract monitoring, or supervision to children subject to a petition filed under chapter 13.34 or 26.33 RCW.

(6) "Indian" means a person who is a member of an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. Sec. 1606.

(7) "Indian child" means an unmarried and unemancipated Indian person who is under eighteen years of age and is either: (a) A member of an Indian tribe; or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Indian child's family" or "extended family member" means an individual, defined by the law or custom of the child's tribe, as a relative of the child. If the child's tribe does not identify such individuals by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent, even following termination of the marriage.

(9) "Indian child's tribe" means a tribe in which an Indian child is a member or eligible for membership.

(10) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law, has legal or temporary physical custody of an Indian child, or to whom the parent has transferred temporary care, physical custody, and control of an Indian child.

(11) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indi-

ans, including any Alaska native village as defined in 43 U.S.C. Sec. 1602(c).

(12) "Member" and "membership" means a determination by an Indian tribe that a person is a member or eligible for membership in that Indian tribe.

(13) "Parent" means a biological parent or parents of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. "Parent" does not include an unwed father whose paternity has not been acknowledged or established under chapter 26.26 RCW or the applicable laws of other states.

(14) "Secretary of the interior" means the secretary of the United States department of the interior.

(15) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings.

(16) "Tribal customary adoption" means adoption or other process through the tribal custom, traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and through which the nonparent is vested with the rights, privileges, and obligations of a legal parent. Termination of the parent-child relationship between the Indian child and the biological parent is not required to effect or recognize a tribal customary adoption. [2011 c 309 § 4.]

*Reviser's note: RCW 74.13.020 was amended by 2011 c 330 § 4, changing subsection (12) to subsection (13).

13.38.050 Determination of Indian status. Any party seeking the foster care placement of, termination of parental rights over, or the adoption of a child must make a good faith effort to determine whether the child is an Indian child. This shall be done by consultation with the child's parent or parents, any person who has custody of the child or with whom the child resides, and any other person that reasonably can be expected to have information regarding the child's possible membership or eligibility for membership in an Indian tribe to determine if the child is an Indian child, and by contacting any Indian tribe in which the child may be a member or may be eligible for membership. Preliminary contacts for the purpose of making a good faith effort to determine a child's possible Indian status, do not constitute legal notice as required by RCW 13.38.070. [2011 c 309 § 5.]

13.38.060 Jurisdiction. (1) An Indian tribe shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe, unless the tribe has consented to the state's concurrent jurisdiction, the tribe has expressly declined to exercise its exclusive jurisdiction, or the state is exercising emergency jurisdiction in strict compliance with RCW 13.38.140.

(2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding, the Indian tribe may retain exclusive jurisdiction, notwithstanding the residence or domicile of the child. [2011 c 309 § 6.]

13.38.070 Notice—Procedures—Determination of Indian status. (1) In any involuntary child custody proceeding seeking the foster care placement of, or the termination of parental rights to, a child in which the petitioning party or the court knows, or has reason to know, that the child is or may be an Indian child as defined in this chapter, the petitioning party shall notify the parent or Indian custodian and the Indian child's tribe or tribes, by certified mail, return receipt requested, and by use of a mandatory Indian child welfare act notice. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary of the interior by registered mail, return receipt requested, in accordance with the regulations of the bureau of Indian affairs. The secretary of the interior has fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for the proceeding.

(2) The determination of the Indian status of a child shall be made as soon as practicable in order to serve the best interests of the Indian child and protect the interests of the child's tribe.

(3)(a) A written determination by an Indian tribe that a child is a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is an Indian child;

(b) A written determination by an Indian tribe that a child is not a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is not a member or eligible for membership in that tribe. Such determinations are presumptively those of the tribe where submitted in the form of a tribal resolution, or signed by or testified to by the person(s) authorized by the tribe's governing body to speak for the tribe, or by the tribe's agent designated to receive notice under the federal Indian child welfare act where such designation is published in the federal register;

(c) Where a tribe provides no response to notice under RCW 13.38.070, such nonresponse shall not constitute evidence that the child is not a member or eligible for membership. Provided, however, that under such circumstances the party asserting application of the federal Indian child welfare act, or this chapter, will have the burden of proving by a preponderance of the evidence that the child is an Indian child.

(4)(a) Where a child has been determined not to be an Indian child, any party to the proceeding, or an Indian tribe that subsequently determines the child is a member, may, during the pendency of any child custody proceeding to which this chapter or the federal Indian child welfare act applies, move the court for redetermination of the child's Indian status based upon new evidence, redetermination by the child's tribe, or newly conferred federal recognition of the tribe.

(b) This subsection (4) does not affect the rights afforded under 25 U.S.C. Sec. 1914. [2011 c 309 § 7.]

13.38.080 Transfer of jurisdiction. (1) In any proceeding for the foster care placement of, or termination of parental

rights to, an Indian child who is not domiciled or residing within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe, upon the motion of any of the following persons:

- (a) Either of the child's parents;
- (b) The child's Indian custodian;
- (c) The child's tribe; or
- (d) The child, if age twelve or older.

The transfer shall be subject to declination by the tribe. The tribe shall have seventy-five days to affirmatively respond to a motion or order transferring jurisdiction to the tribal court. A failure of the tribe to respond within the seventy-five day period shall be construed as a declination to accept transfer of the case.

(2) If the child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

(3) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court shall not transfer the proceeding.

(4) Following entry of an order transferring jurisdiction to the Indian child's tribe:

(a) Upon receipt of an order from a tribal court accepting jurisdiction, the state court shall dismiss the child custody proceeding without prejudice.

(b) Pending receipt of such tribal court order, the state court may conduct additional hearings and enter orders which strictly comply with the requirements of the federal Indian child welfare act and this chapter. The state court shall not enter a final order in any child custody proceeding, except an order dismissing the proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child was removed, while awaiting receipt of a tribal court order accepting jurisdiction, or in the absence of a tribal court order or other formal written declination of jurisdiction.

(c) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody matter in strict compliance with the federal Indian child welfare act, this chapter, and any applicable tribal-state agreement. [2011 c 309 § 8.]

13.38.090 Right to intervene. The Indian child, the Indian child's tribe or tribes, and the Indian custodian have the right to intervene at any point in any child custody proceeding involving the Indian child. [2011 c 309 § 9.]

13.38.100 Full faith and credit. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to Indian child custody proceedings. [2011 c 309 § 10.]

13.38.110 Right to counsel. In any child custody proceeding under this chapter in which the court determines the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian shall have the right to court-appointed counsel. The court may, in its discretion, appoint counsel for

the Indian child upon a finding that the appointment is in the best interests of the Indian child. [2011 c 309 § 11.]

13.38.120 Right to examine reports, other documents. Each party to a child custody proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceeding may be based. [2011 c 309 § 12.]

13.38.130 Involuntary foster care placement, termination of parental rights—Determination—Qualified expert witness. (1) A party seeking to effect an involuntary foster care placement of or the involuntary termination of parental rights to an Indian child shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(2) No involuntary foster care placement may be ordered in a child custody proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For purposes of this subsection, any harm that may result from interfering with the bond or attachment between the foster parent and the child shall not be the sole basis or primary reason for continuing the child in foster care.

(3) No involuntary termination of parental rights may be ordered in a child custody proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For the purposes of this subsection, any harm that may result from interfering with the bond or attachment that may have formed between the child and a foster care provider shall not be the sole basis or primary reason for termination of parental rights over an Indian child.

(4)(a) For purposes of this section, "qualified expert witness" means a person who provides testimony in a proceeding under this chapter to assist a court in the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child. In any proceeding in which the child's Indian tribe has intervened pursuant to RCW 13.38.090 or, if the department is the petitioner and the Indian child's tribe has entered into a local agreement with the department for the provision of child welfare services, the petitioner shall contact the tribe and ask the tribe to identify a tribal member or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices. The petitioner shall notify the child's Indian tribe of the need to provide a "qualified expert witness" at least twenty days prior to any evidentiary hearing in which the testimony of the witness will be required. If the child's Indian tribe does not identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner may

proceed to identify such a witness pursuant to (b) of this subsection.

(b) In any proceeding in which the child's Indian tribe has not intervened or entered into a local agreement with the department for the provision of child welfare services, or a child's Indian tribe has not responded to a request to identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner shall provide a "qualified expert witness" who meets one or more of the following requirements in descending order of preference:

(i) A member of the child's Indian tribe or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices for this purpose;

(ii) Any person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe;

(iii) Any person having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and child rearing practices in Indian tribes with cultural similarities to the Indian child's tribe; or

(iv) A professional person having substantial education and experience in the area of his or her specialty.

(c) When the petitioner is the department or a supervising agency, the currently assigned department or agency caseworker or the caseworker's supervisor may not testify as a "qualified expert witness" for purposes of this section. Nothing in this section shall bar the assigned department or agency caseworker or the caseworker's supervisor from testifying as an expert witness for other purposes in a proceeding under this chapter. Nothing in this section shall bar other department or supervising agency employees with appropriate expert qualifications or experience from testifying as a "qualified expert witness" in a proceeding under this chapter. Nothing in this section shall bar the petitioner or any other party in a proceeding under this chapter from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court including the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child. [2011 c 309 § 13.]

13.38.140 Emergency removal or placement of Indian child—Notice. (1) Notwithstanding any other provision of federal or state law, nothing shall be construed to prevent the department or law enforcement from the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the child.

(2) The department or law enforcement agency shall ensure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the federal Indian child

welfare act and this chapter to transfer the child to the jurisdiction of the appropriate Indian tribe or restore the child to the child's parent or Indian custodian, if appropriate.

(3) When the nature of the emergency allows, the department must notify the child's tribe before the removal has occurred. If prior notification is not possible, the department shall notify the child's tribe by the quickest means possible. The notice must contain the basis for the Indian child's removal, the time, date, and place of the initial hearing, and the tribe's right to intervene and participate in the proceeding. This notice shall not constitute the notice required under RCW 13.38.070 for purposes of subsequent dependency, termination of parental rights, or adoption proceedings. [2011 c 309 § 14.]

13.38.150 Consent to foster care placement or termination of parental rights—Withdrawal. (1) If an Indian child's parent or Indian custodian voluntarily consents to a foster care placement of the child or to termination of parental rights, the consent is not valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court must also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent for release of custody given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care placement at any time and, upon the withdrawal of consent, the child shall be returned to the parent or Indian custodian.

(3) In a voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an order terminating parental rights or a final decree of adoption, and the child shall be returned to the parent.

(4) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress. Upon a finding that such consent was obtained through fraud or duress the court shall vacate the decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under this section unless otherwise allowed by state law. [2011 c 309 § 15.]

13.38.160 Improper removal of Indian child. If a petitioner in a child custody proceeding under this chapter has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger. [2011 c 309 § 16.]

13.38.170 Removal of Indian child from adoptive or foster care placement. (1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, the biological parent or prior Indian custodian may petition to have the child returned to their custody and the court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or prior Indian custodian is not in the best interests of the Indian child.

(2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the purpose of further foster care, preadoptive, or adoptive placement, the placement shall be in accordance with this chapter, except when an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed. [2011 c 309 § 17.]

13.38.180 Placement preferences. (1) When an emergency removal, foster care placement, or preadoptive placement of an Indian child is necessary, a good faith effort will be made to place the Indian child:

- (a) In the least restrictive setting;
- (b) Which most approximates a family situation;
- (c) Which is in reasonable proximity to the Indian child's home; and
- (d) In which the Indian child's special needs, if any, will be met.

(2) In any foster care or preadoptive placement, a preference shall be given, in absence of good cause to the contrary, to the child's placement with one of the following:

- (a) A member of the child's extended family;
- (b) A foster home licensed, approved, or specified by the child's tribe;
- (c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
- (d) A child foster care agency approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs;
- (e) A non-Indian child foster care agency approved by the child's tribe;
- (f) A non-Indian family that is committed to:
 - (i) Promoting and allowing appropriate extended family visitation;
 - (ii) Establishing, maintaining, and strengthening the child's relationship with his or her tribe or tribes; and
 - (iii) Participating in the cultural and ceremonial events of the child's tribe.

(3) In the absence of good cause to the contrary, any adoptive or other permanent placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

- (a) Extended family members;
- (b) An Indian family of the same tribe as the child;
- (c) An Indian family that is of a similar culture to the child's tribe;
- (d) Another Indian family; or
- (e) Any other family which can provide a suitable home for an Indian child, such suitability to be determined in consultation with the Indian child's tribe or, in proceedings under chapter 13.34 RCW where the Indian child is in the custody

of the department or a supervising agency and the Indian child's tribe has not intervened or participated, the local Indian child welfare advisory committee.

(4) Notwithstanding the placement preferences listed in subsections (2) and (3) of this section, if a different order of placement preference is established by the child's tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe so long as the placement is in the least restrictive setting appropriate to the particular needs of the child.

(5) Where appropriate, the preference of the Indian child or his or her parent shall be considered by the court. Where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(6) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or extended family members maintain social and cultural ties.

(7) Nothing in this section shall prevent the department or the court from placing the child with a parent to effectuate a permanent plan regardless of the parent's relationship to the child's tribe. [2011 c 309 § 18.]

13.38.190 Review of cases—Standards and procedures—Compliance. (1) The department, in consultation with Indian tribes, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the federal Indian child welfare act and this chapter. These standards and procedures and the monitoring methods shall also be integrated into the department's child welfare contracting and contract monitoring process.

(2) Nothing in this chapter shall affect, impair, or limit rights or remedies provided to any party under the federal Indian child welfare act, 25 U.S.C. Sec. 1914. [2011 c 309 § 19.]

Chapter 13.40 RCW

JUVENILE JUSTICE ACT OF 1977

Sections

13.40.005	Repealed.
13.40.160	Disposition order—Court's action prescribed—Disposition outside standard range—Right of appeal—Special sex offender disposition alternative.
13.40.162	Special sex offender disposition alternative.
13.40.462	Reinvesting in youth program.

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

13.40.160 Disposition order—Court's action prescribed—Disposition outside standard range—Right of appeal—Special sex offender disposition alternative. (1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall

impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) If a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court may impose the special sex offender disposition alternative under RCW 13.40.162.

(4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

(5) If a juvenile is subject to a commitment of 15 to 65 weeks of confinement, the court may impose the disposition alternative under RCW 13.40.167.

(6) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under *RCW 13.40.169 may impose the disposition alternative under *RCW 13.40.169.

(7) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9.41.040(2)(a)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(8) RCW 13.40.308 shall govern the disposition of any juvenile adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065, possession of a stolen motor vehicle as defined under RCW 9A.56.068, taking a motor vehicle without permission in the first degree under RCW 9A.56.070, and taking a motor vehicle without permission in the second degree under RCW 9A.56.075.

(9) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dis-

positional order shall specifically state the number of days of credit for time served.

(10) Except as provided under subsection (3), (4), (5), or (6) of this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(11) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense. [2011 c 338 § 2; 2007 c 199 § 14. Prior: 2004 c 120 § 4; 2004 c 38 § 11; prior: 2003 c 378 § 3; 2003 c 53 § 99; 2002 c 175 § 22; 1999 c 91 § 2; prior: 1997 c 338 § 25; 1997 c 265 § 1; 1995 c 395 § 7; 1994 sp.s. c 7 § 523; 1992 c 45 § 6; 1990 c 3 § 302; 1989 c 407 § 4; 1983 c 191 § 8; 1981 c 299 § 13; 1979 c 155 § 68; 1977 ex.s. c 291 § 70.]

***Reviser's note:** RCW 13.40.169 expired July 1, 2005.

Findings—Intent—Short title—2007 c 199: See notes following RCW 9A.56.065.

Effective date—2004 c 120: See note following RCW 13.40.010.

Effective date—2004 c 38: See note following RCW 18.155.075.

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

Effective date—2002 c 175: See note following RCW 7.80.130.

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

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

Additional notes found at www.leg.wa.gov

13.40.162 Special sex offender disposition alternative. (1) A juvenile offender is eligible for the special sex offender disposition alternative when:

(a) The offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and

(b) The offender has no history of a prior sex offense.

(2) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The respondent's version of the facts and the official version of the facts;

(ii) The respondent's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The respondent's social, educational, and employment situation;

(v) Other evaluation measures used.

The report shall set forth the sources of the evaluator's information.

(b) The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) The frequency and type of contact between the offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(3) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years.

(4) As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(a) Devote time to a specific education, employment, or occupation;

(b) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(c) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(d) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(e) Report as directed to the court and a probation counselor;

(f) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;

(g) Make restitution to the victim for the cost of any counseling reasonably related to the offense; or

(h) Comply with the conditions of any court-ordered probation bond.

(5) If the court orders twenty-four hour, continuous monitoring of the offender while on probation, the court shall include the basis for this condition in its findings.

(6)(a) The court must order the offender not to attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings.

(b) The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district.

(c) The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

(7)(a) The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

(b) At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

(c) Except as provided in this subsection, examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW.

(d) A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (i) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (ii) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and (iii) the evaluation and treatment plan comply with this subsection and the rules adopted by the department of health.

(8)(a) If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days confinement for violating conditions of the disposition.

(b) The court may order both execution of the disposition and up to thirty days confinement for the violation of the conditions of the disposition.

(c) The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

(9) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the

crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(10) A disposition entered under this section is not appealable under RCW 13.40.230. [2011 c 338 § 3.]

13.40.462 Reinvesting in youth program. (1) The department of social and health services juvenile rehabilitation administration shall establish a reinvesting in youth program that awards grants to counties for implementing research-based early intervention services that target juvenile justice-involved youth and reduce crime, subject to the availability of amounts appropriated for this specific purpose.

(2) Effective July 1, 2007, any county or group of counties may apply for participation in the reinvesting in youth program.

(3) Counties that participate in the reinvesting in youth program shall have a portion of their costs of serving youth through the research-based intervention service models paid for with moneys from the reinvesting in youth account established pursuant to RCW 13.40.466.

(4) The department of social and health services juvenile rehabilitation administration shall review county applications for funding through the reinvesting in youth program and shall select the counties that will be awarded grants with funds appropriated to implement this program. The department, in consultation with the Washington state institute for public policy, shall develop guidelines to determine which counties will be awarded funding in accordance with the reinvesting in youth program. At a minimum, counties must meet the following criteria in order to participate in the reinvesting in youth program:

(a) Counties must match state moneys awarded for research-based early intervention services with nonstate resources that are at least proportional to the expected local government share of state and local government cost avoidance that would result from the implementation of such services;

(b) Counties must demonstrate that state funds allocated pursuant to this section are used only for the intervention service models authorized pursuant to RCW 13.40.464;

(c) Counties must participate fully in the state quality assurance program established in RCW 13.40.468 to ensure fidelity of program implementation. If no state quality assurance program is in effect for a particular selected research-based service, the county must submit a quality assurance plan for state approval with its grant application. Failure to demonstrate continuing compliance with quality assurance plans shall be grounds for termination of state funding; and

(d) Counties that submit joint applications must submit for approval by the department of social and health services juvenile rehabilitation administration multicounty plans for efficient program delivery. [2011 1st sp.s. c 32 § 4; 2006 c 304 § 2.]

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

Finding—Intent—2006 c 304: "The legislature finds that there are youth and family-focused intervention services that have been proven through rigorous evaluation in the state of Washington and elsewhere to significantly reduce violence and crime while saving more public safety dollars than they cost. Under current state laws, no local government acting alone has the financial incentive to invest in these cost-effective services because

the savings accrue to multiple levels of government with the largest savings going to the state. It is the intent of the legislature to create incentives for local government to invest in cost-effective intervention services that reduce crime by reimbursing local governments with a portion of the cost savings that accrue to the state as the result of local investments in such services." [2006 c 304 § 1.]

Entitlement not created—2006 c 304: "Nothing in this act creates an entitlement for a county or group of counties to receive funding under the program in sections 2 and 3 of this act." [2006 c 304 § 8.]

Effective date—2006 c 304: "This act takes effect July 1, 2006." [2006 c 304 § 9.]

Chapter 13.50 RCW

KEEPING AND RELEASE OF RECORDS BY JUVENILE JUSTICE OR CARE AGENCIES

Sections

13.50.010	Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access.
13.50.050	Records relating to commission of juvenile offenses—Maintenance of, access to, and destruction—Release of information to schools.

13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access. (1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of the family and children's ombudsman, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(d) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. The court shall release to the caseload forecast council records needed for its research and data-gathering functions. Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the caseload forecast council upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

(10) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the legislative children's oversight committee or the office of the family and children's ombudsman.

(11) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the Washington state center for court research. The Washington state center for court research shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. The research copy may not be subject to any records retention schedule and must include records destroyed or removed

from the judicial information system pursuant to RCW 13.50.050 (17) and (18) and 13.50.100(3).

(12) The court shall release to the Washington state office of public defense records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records. [2011 1st sp.s. c 40 § 30; 2010 c 150 § 3; 2009 c 440 § 1; 1998 c 269 § 4. Prior: 1997 c 386 § 21; 1997 c 338 § 39; 1996 c 232 § 6; 1994 sp.s. c 7 § 541; 1993 c 374 § 1; 1990 c 246 § 8; 1986 c 288 § 11; 1979 c 155 § 8.]

Application—Recalculation of community custody terms—2011 1st sp.s. c 40: See note following RCW 9.94A.501.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

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

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

Additional notes found at www.leg.wa.gov

13.50.050 Records relating to commission of juvenile offenses—Maintenance of, access to, and destruction—Release of information to schools. (1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (12) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) Upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys may cooperate with schools in releasing information to a school pertaining to the investigation, diversion, and prosecution of a juvenile attending the school. Upon the decision to arrest or the arrest, incident reports may be released unless releasing the records would

jeopardize the investigation or prosecution or endanger witnesses. If release of incident reports would jeopardize the investigation or prosecution or endanger witnesses, law enforcement and prosecuting attorneys may release information to the maximum extent possible to assist schools in protecting other students, staff, and school property.

(8) The juvenile court and the prosecutor may set up and maintain a central recordkeeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central recordkeeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central recordkeeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(9) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(10) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system shall be released upon request to the adult corrections system.

(11) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (23) of this section, order the sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(12)(a) The court shall not grant any motion to seal records for class A offenses made pursuant to subsection (11) of this section that is filed on or after July 1, 1997, unless:

(i) Since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent five consecutive years in the community without committing any offense or crime that subsequently results in an adjudication or conviction;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense;

(v) The person has not been convicted of rape in the first degree, rape in the second degree, or indecent liberties that was actually committed with forcible compulsion; and

(vi) Full restitution has been paid.

(b) The court shall not grant any motion to seal records for class B, C, gross misdemeanor and misdemeanor offenses and diversions made under subsection (11) of this section unless:

(i) Since the date of last release from confinement, including full-time residential treatment, if any, entry of disposition, or completion of the diversion agreement, the person has spent two consecutive years in the community without being convicted of any offense or crime;

(ii) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(iii) No proceeding is pending seeking the formation of a diversion agreement with that person;

(iv) The person is no longer required to register as a sex offender under RCW 9A.44.130 or has been relieved of the duty to register under RCW 9A.44.143 if the person was convicted of a sex offense; and

(v) Full restitution has been paid.

(13) The person making a motion pursuant to subsection (11) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(14)(a) If the court grants the motion to seal made pursuant to subsection (11) of this section, it shall, subject to subsection (23) of this section, order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(b) In the event the subject of the juvenile records receives a full and unconditional pardon, the proceedings in the matter upon which the pardon has been granted shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events upon which the pardon was received. Any agency shall reply to any inquiry concerning the records pertaining to the events for which the subject received a pardon that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(15) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and subsection (23) of this section.

(16) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW. The administrative office of the courts shall ensure that the superior court judicial infor-

mation system provides prosecutors access to information on the existence of sealed juvenile records.

(17)(a)(i) Subject to subsection (23) of this section, all records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within ninety days of becoming eligible for destruction. Juvenile records are eligible for destruction when:

(A) The person who is the subject of the information or complaint is at least eighteen years of age;

(B) His or her criminal history consists entirely of one diversion agreement or counsel and release entered on or after June 12, 2008;

(C) Two years have elapsed since completion of the agreement or counsel and release;

(D) No proceeding is pending against the person seeking the conviction of a criminal offense; and

(E) There is no restitution owing in the case.

(ii) No less than quarterly, the administrative office of the courts shall provide a report to the juvenile courts of those individuals whose records may be eligible for destruction. The juvenile court shall verify eligibility and notify the Washington state patrol and the appropriate local law enforcement agency and prosecutor's office of the records to be destroyed. The requirement to destroy records under this subsection is not dependent on a court hearing or the issuance of a court order to destroy records.

(iii) The state and local governments and their officers and employees are not liable for civil damages for the failure to destroy records pursuant to this section.

(b) All records maintained by any court or law enforcement agency, including the juvenile court, local law enforcement, the Washington state patrol, and the prosecutor's office, shall be automatically destroyed within thirty days of being notified by the governor's office that the subject of those records received a full and unconditional pardon by the governor.

(c) A person eighteen years of age or older whose criminal history consists entirely of one diversion agreement or counsel and release entered prior to June 12, 2008, may request that the court order the records in his or her case destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that two years have elapsed since completion of the agreement or counsel and release.

(d) A person twenty-three years of age or older whose criminal history consists of only referrals for diversion may request that the court order the records in those cases destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that all diversion agreements have been successfully completed and no proceeding is pending against the person seeking the conviction of a criminal offense.

(18) If the court grants the motion to destroy records made pursuant to subsection (17)(c) or (d) of this section, it shall, subject to subsection (23) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(19) The person making the motion pursuant to subsection (17)(c) or (d) of this section shall give reasonable notice

of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(20) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

(21) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

(22) Any juvenile justice or care agency may, subject to the limitations in subsection (23) of this section and (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older or pursuant to subsection (17)(a) of this section.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

(23) Except for subsection (17)(b) of this section, no identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest, charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

(24) Information identifying child victims under age eighteen who are victims of sexual assaults by juvenile offenders is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying a child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault. [2011 c 338 § 4; 2011 c 333 § 4; 2010 c 150 § 2; 2008 c 221 § 1; 2004 c 42 § 1. Prior: 2001 c 175 § 1; 2001 c 174 § 1; 2001 c 49 § 2; 1999 c 198 § 4; 1997 c 338 § 40; 1992 c 188 § 7; 1990 c 3 § 125; 1987 c 450 § 8; 1986 c 257 § 33; 1984 c 43 § 1; 1983 c 191 § 19; 1981 c 299 § 19; 1979 c 155 § 9.]

Rules of court: *Superior Court Criminal Rules (CrR), generally. Discovery: CrR 4.7.*

Reviser's note: This section was amended by 2011 c 333 § 4 and by 2011 c 338 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—2011 c 333: "RCW 13.50.050 (14)(b) and (17)(b) apply to all records of a full and unconditional pardon and should be applied retroactively as well as prospectively." [2011 c 333 § 5.]

Findings—Intent—2011 c 333: See note following RCW 19.182.040.

Intent—2001 c 49: "The legislature intends to change the results of the holding of *State v. T. K.*, 139 Wn. 2d 320 (1999), and have any motion made after July 1, 1997, to seal juvenile records be determined by the provisions of RCW 13.50.050 in effect after July 1, 1997." [2001 c 49 § 1.]

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

Findings—Intent—Severability—1992 c 188: See notes following RCW 7.69A.020.

Additional notes found at www.leg.wa.gov

Title 14

AERONAUTICS

Chapters

14.20 Aircraft dealers.

Chapter 14.20 RCW

AIRCRAFT DEALERS

Sections

14.20.020 Aircraft dealer licensure—Penalty.

14.20.020 Aircraft dealer licensure—Penalty. (1) It is unlawful for a person to act as an aircraft dealer without a currently valid aircraft dealer's license issued under this chapter.

(2)(a) Except as provided in (b) of this subsection, a person acting as an aircraft dealer without a currently issued aircraft dealer's license is guilty of a misdemeanor and shall be punished by either a fine of not more than one thousand dollars or by imprisonment for not more than ninety days, or both.

(b) A person convicted on a second or subsequent conviction within a five-year period is guilty of a gross misdemeanor and shall be punished by either a fine of not more than five thousand dollars or by imprisonment for up to three hundred sixty-four days, or both.

(3) In addition to, or in lieu of, the penalties provided in this section, or as a condition to the suspension of a sentence that may be imposed under this section, the court in its discretion may prohibit the violator from acting as an aircraft dealer within the state for such a period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under this section or as contempt of court.

(4) Any person applying for an aircraft dealer's license shall do so at the office of the secretary on a form provided for that purpose by the secretary. [2011 c 96 § 15; 2003 c 53 § 102; 1993 c 208 § 2; 1984 c 7 § 10; 1983 c 135 § 1; 1955 c 150 § 2.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Additional notes found at www.leg.wa.gov

Title 15

AGRICULTURE AND MARKETING

Chapters

- 15.24 Washington apple commission.
- 15.26 Tree fruit research act.
- 15.28 Soft tree fruits.
- 15.30 Controlled atmosphere storage of fruits and vegetables.
- 15.44 Dairy products commission.
- 15.48 Seed bailment contracts.
- 15.54 Fertilizers, minerals, and limes.
- 15.58 Washington pesticide control act.
- 15.60 Apiaries.
- 15.62 Honey bee commission.
- 15.65 Washington state agricultural commodity boards.
- 15.66 Washington state agricultural commodity commissions.
- 15.76 Agricultural fairs, youth shows, exhibitions.
- 15.80 Weighmasters.
- 15.88 Wine commission.
- 15.89 Washington beer commission.
- 15.92 Center for sustaining agriculture and natural resources.
- 15.115 Washington grain commission.

Chapter 15.24 RCW

WASHINGTON APPLE COMMISSION

Sections

- 15.24.085 Repealed.
- 15.24.900 Purpose of chapter—Regulation of apples and apple products—Existing comprehensive scheme—Applicable laws.

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

15.24.900 Purpose of chapter—Regulation of apples and apple products—Existing comprehensive scheme—Applicable laws. (1) This chapter is passed:

(a) In the exercise of the police power of the state to assure, through this chapter, and other chapters, that the apple industry is highly regulated to protect the public health, to prevent fraudulent practices, to promote the welfare of the state, and to stabilize and protect the apple industry of the state as a vital and integral part of its economy for the benefit of all its citizens;

(b) Because the apple crop grown in Washington comprises one of the major agricultural crops of Washington, and that therefore the business of selling and distributing such crop and the expanding and protection of its market is of public interest;

(c) Because it is necessary and expedient to enhance the reputation of Washington apples in domestic and foreign markets;

(d) Because it is necessary to discover the health giving qualities and food and dietetic value of Washington apples, and to spread that knowledge throughout the world in order to increase the consumption of Washington apples;

(e) Because Washington grown apples are handicapped by high freight rates in competition with eastern and foreign

grown apples in the markets of the world, and this disadvantage can only be overcome by education and advertising;

(f) Because the stabilizing and promotion of the apple industry, the enlarging of its markets, and the increasing of the consumption of apples are necessary to assure and increase the payment of taxes to the state and its subdivisions, to alleviate unemployment within the state, and increase wages for agricultural labor;

(g) To disseminate information giving the public full knowledge of the manner of production, the cost and expense thereof, the care taken to produce and sell only apples of the finest quality, the methods and care used in preparing for market, and the methods of sale and distribution to increase the amount secured by the producer therefor, so that they can pay higher wages and pay their taxes, and by such information to reduce the cost of distribution so that the spread between the cost to the consumer and the amount received by the producer will be reduced to the minimum absolutely necessary; and

(h) To protect the general public by educating it in reference to the various varieties and grades of Washington apples, the time to use and consume each variety, and the uses to which each variety should be put.

(2) The history, economy, culture, and future of Washington state's agricultural industry involves the apple industry. In order to develop and promote apples and apple products as part of an existing comprehensive scheme to regulate those products, the legislature declares:

(a) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its apple and apple products be properly promoted by establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standards of and for apples and apple products; and by working to stabilize the apple industry and by increasing consumption of apples and apple products within the state, nation, and internationally;

(b) That apple producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(c) That it is in the overriding public interest that support for the apple industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that apples and apple products be promoted individually, as well as part of a comprehensive promotion of the agricultural industry to:

(i) Enhance the reputation and image of Washington state's agricultural industry;

(ii) Increase the sale and use of apples and apple products in local, domestic, and foreign markets;

(iii) Protect the public and consumers by correcting any false or misleading information and by educating the public in reference to the quality, care, and methods used in the production of apples and apple products, and in reference to the various sizes, grades, and varieties of apples and the uses to which each should be put;

(iv) Increase the knowledge of the health-giving qualities and dietetic value of apple products; and

(v) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of apples and apple products;

(d) That the apple industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulation of the industry. Other regulations and restraints applicable to the apple industry include:

(i) Washington agriculture general provisions, chapter 15.04 RCW;

(ii) Pests and diseases, chapter 15.08 RCW;

(iii) Standards of grades and packs, chapter 15.17 RCW;

(iv) Tree fruit research, chapter 15.26 RCW;

(v) Controlled atmosphere storage, chapter 15.30 RCW;

(vi) Higher education in agriculture, chapter 28B.30 RCW;

(vii) Department of agriculture, chapter 43.23 RCW;

(viii) Fertilizers, minerals, and limes under chapter 15.54 RCW;

(ix) Organic products act under chapter 15.86 RCW;

(x) Intrastate commerce in food, drugs, and cosmetics under chapter 69.04 RCW and rules;

(xi) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;

(xii) Planting stock under chapter 15.14 RCW;

(xiii) Washington pesticide control act under chapter 15.58 RCW;

(xiv) Farm marketing under chapter 15.64 RCW;

(xv) Insect pests and plant diseases under chapter 17.24 RCW;

(xvi) Weights and measures under chapter 19.94 RCW;

(xvii) Agricultural products—Commission merchants, dealers, brokers, buyers, and agents under chapter 20.01 RCW; and

(xviii) The federal insecticide, fungicide, and rodenticide act under 7 U.S.C. Sec. 136; and

(e) That this chapter is in the exercise of the police powers of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state. [2011 c 103 § 27; 2002 c 313 § 134; 1961 c 11 § 15.24.900. Prior: 1937 c 195 § 1; RRS § 2874-1.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Chapter 15.26 RCW

TREE FRUIT RESEARCH ACT

Sections

15.26.120 Assessments levied—Referendum.

15.26.120 Assessments levied—Referendum. There is hereby levied on all commercial tree fruit produced in this state or held out as being produced in this state for fresh or processing use, an assessment, initially not to exceed ten cents per ton on all such tree fruits, except that such assessment for apples for fresh shipment shall be at the rate of one-half cent per one hundred pounds gross billing weight. Such assessment on all such commercial tree fruit shall not become effective until approved by a majority of such commercial producers of tree fruit voting in a referendum conducted jointly by the Washington apple commission, Washington

state fruit commission, and the department. The respective commissions shall supply all known producers of tree fruits subject to their respective commissions with a ballot for the referendum and the department shall supply all known tree fruit producers not subject to either of the commissions with a ballot wherein all known producers may approve or disapprove such assessment. The commission may waive the payment of assessments by any class of producers of minimal amounts of tree fruit when the commission determines subsequent to a hearing that the cost of collecting and keeping records of such assessments is disproportionate to the return to the commission. [2011 c 103 § 1; 1969 c 129 § 12.]

Purpose—2011 c 103: "The purpose of this act is to make technical, nonsubstantive amendments to the sections included in this act. No substantive changes to the law are intended or implied." [2011 c 103 § 45.]

Collection by the Washington apple commission: RCW 15.24.110.

Chapter 15.28 RCW

SOFT TREE FRUITS

Sections

15.28.015 Regulating soft tree fruits—Commission created—Existing comprehensive scheme—Applicable laws.

15.28.015 Regulating soft tree fruits—Commission created—Existing comprehensive scheme—Applicable laws. The history, economy, culture, and the future of Washington state's agriculture involves the production of soft tree fruits. In order to develop and promote Washington's soft tree fruits as part of an existing comprehensive regulatory scheme the legislature declares:

(1) That the Washington state fruit commission is created;

(2) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its soft tree fruits be properly promoted by (a) enabling the soft tree fruit industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered cooperative marketing, grading, and standardizing of soft tree fruits they produce; and (b) working to stabilize the soft tree fruit industry by increasing consumption of soft tree fruits within the state, the nation, and internationally;

(3) That producers of soft tree fruits operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the producers of soft tree fruits in their ability to compete in local, domestic, and foreign markets;

(4) That it is in the overriding public interest that support for the soft tree fruit industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that soft tree fruits be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of Washington state's soft tree fruits in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's soft tree fruits;

(d) Increase the knowledge of the health-giving qualities and dietetic value of soft tree fruits;

(e) Support and engage in cooperative programs or activities that benefit the production, handling, processing, marketing, and uses of soft tree fruits produced in Washington state;

(5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state and to stabilize and protect the soft tree fruit industry of the state; and

(6) That the production and marketing of soft tree fruit is a highly regulated industry and that the provisions of this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the soft tree fruit industry include:

(a) The federal marketing order under 7 C.F.R. Part 922 (apricots);

(b) The federal marketing order under 7 C.F.R. Part 923 (sweet cherries);

(c) The federal marketing order under 7 C.F.R. Part 924 (prunes);

(d) The federal marketing order under 7 C.F.R. Part 930 (tart cherries);

(e) The federal marketing order under 7 C.F.R. Part 931 (Bartlett pears);

(f) Tree fruit research act under chapter 15.26 RCW;

(g) Controlled atmosphere storage of fruits and vegetables under chapter 15.30 RCW;

(h) Organic products act under chapter 15.86 RCW;

(i) Intrastate commerce in food, drugs, and cosmetics under chapter 69.04 RCW and rules;

(j) Washington food processing act under chapter 69.07 RCW;

(k) Washington food storage warehouses act under chapter 69.10 RCW;

(l) Weighmasters under chapter 15.80 RCW;

(m) Horticultural pests and diseases under chapter 15.08 RCW;

(n) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;

(o) Planting stock under chapter 15.14 RCW;

(p) Standards of grades and packs under chapter 15.17 RCW;

(q) Washington pesticide control act under chapter 15.58 RCW;

(r) Farm marketing under chapter 15.64 RCW;

(s) Insect pests and plant diseases under chapter 17.24 RCW;

(t) Weights and measures under chapter 19.94 RCW;

(u) Agricultural products—Commission merchants, dealers, brokers, buyers, and agents under chapter 20.01 RCW; and

(v) Rules under the Washington Administrative Code, Title 16. [2011 c 103 § 28; 2002 c 313 § 103.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Chapter 15.30 RCW

CONTROLLED ATMOSPHERE STORAGE OF FRUITS AND VEGETABLES

Sections

15.30.200 Disposition of fees.

15.30.200 Disposition of fees. All moneys collected under the provisions of this chapter for the inspection and certification of any fruits or vegetables subject to the provisions of this chapter shall be handled and deposited in the manner provided for in chapter 15.17 RCW, as enacted or hereafter amended, for the handling of inspection and certification fees derived for the inspection of any fruits and vegetables. [2011 c 103 § 2; 1961 c 29 § 20.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Chapter 15.44 RCW

DAIRY PRODUCTS COMMISSION

Sections

15.44.015 Regulating dairy products—Commission created—Existing comprehensive scheme—Laws applicable.

15.44.015 Regulating dairy products—Commission created—Existing comprehensive scheme—Laws applicable. The history, economy, culture, and the future of Washington state's agriculture involves the dairy industry. In order to develop and promote Washington's dairy products as part of an existing comprehensive scheme to regulate those products the legislature declares:

(1) That the Washington state dairy products commission is created. The commission may also take actions under the name "the dairy farmers of Washington";

(2) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its dairy products be properly promoted by (a) enabling the dairy industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the dairy products they produce; and (b) working to stabilize the dairy industry by increasing consumption of dairy products within the state, the nation, and internationally;

(3) That dairy producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the dairy producer's ability to compete in local, domestic, and foreign markets;

(4) That it is in the overriding public interest that support for the dairy industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that dairy products be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of Washington state's dairy products in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's dairy products;

(d) Increase the knowledge of the health-giving qualities and dietetic value of dairy products; and

(e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of dairy products produced in Washington state;

(5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and

(6) That the dairy industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the dairy industry include the:

(a) Federal marketing order under 7 C.F.R., Part 1124;

(b) Dairy promotion program under the dairy and tobacco adjustment act of 1983, Subtitle B;

(c) Milk and milk products act under chapter 15.36 RCW and rules, including:

(i) The national conference of interstate milk shippers pasteurized milk ordinance;

(ii) The national conference of interstate milk shippers dry milk ordinance;

(iii) Standards for the fabrication of single-service containers;

(iv) Procedures governing cooperative state-public health service;

(v) Methods of making sanitation ratings of milk supplies;

(vi) Evaluation and certification of milk laboratories; and

(vii) Interstate milk shippers;

(d) Milk and milk products for animal food act under chapter 15.37 RCW and rules;

(e) Organic products act under chapter 15.86 RCW and rules;

(f) Intrastate commerce in food, drugs, and cosmetics act under chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating to the general manufacturing practices, milk processing, food labeling, food standards, and food additives;

(g) Washington food processing act under chapter 69.07 RCW and rules;

(h) Washington food storage warehouses act under chapter 69.10 RCW and rules;

(i) Animal health under chapter 16.36 RCW and rules;

(j) Weighmasters under chapter 15.80 RCW and rules; and

(k) Dairy nutrient management act under chapter 90.64 RCW and rules. [2011 c 103 § 29; 2002 c 313 § 87.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Chapter 15.48 RCW

SEED BAILMENT CONTRACTS

Sections

15.48.280 Security interest not created by contract—Filing, recording or notice of contract not required to establish validity of contract or title in bailor.

15.48.280 Security interest not created by contract—Filing, recording or notice of contract not required to establish validity of contract or title in bailor. Seed bailment contracts for the increase of agricultural seeds shall not create a security interest under the terms of the Uniform Commercial Code, chapter 62A.9A RCW. No filing, recording, or notice of a seed bailment contract shall be required under any of the laws of the state to establish, during the term of a seed bailment contract the validity of any such contracts, nor to establish and confirm in the bailor the title to all seed, seed stock, plant life and the resulting seed crop thereof grown or produced by the bailee under the terms of a bailment contract. [2011 c 103 § 4; 1967 c 114 § 15.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

Chapter 15.54 RCW

FERTILIZERS, MINERALS, AND LIMES

Sections

15.54.270 Definitions. (*Effective January 1, 2013.*)

15.54.470 Violations—Department discretion—Duty of prosecuting attorney—Injunctions. (*Effective January 1, 2013.*)

15.54.500 Turf fertilizer—Prohibitions on application, sales, and retail display. (*Effective January 1, 2013.*)

15.54.270 Definitions. (*Effective January 1, 2013.*)

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

(1) "Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more grades of commercial fertilizers.

(2) "Bulk fertilizer" means commercial fertilizer distributed in a nonpackaged form such as, but not limited to, tote bags, tote tanks, bins, tanks, trailers, spreader trucks, and railcars.

(3) "Calcium carbonate equivalent" means the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate.

(4) "Commercial fertilizer" means a substance containing one or more recognized plant nutrients and that is used for its plant nutrient content or that is designated for use or claimed to have value in promoting plant growth, and shall include limes, gypsum, and manipulated animal and vegetable manures. It does not include unmanipulated animal and vegetable manures, organic waste-derived material, and other products exempted by the department by rule.

(5) "Composting" means the controlled aerobic degradation of organic waste materials. Natural decay of organic waste under uncontrolled conditions is not composting.

(6) "Customer-formula fertilizer" means a mixture of commercial fertilizer or materials of which each batch is mixed according to the specifications of the final purchaser.

(7) "Department" means the department of agriculture of the state of Washington or its duly authorized representative.

(8) "Director" means the director of the department of agriculture.

(9) "Distribute" means to import, consign, manufacture, produce, compound, mix, or blend commercial fertilizer, or to offer for sale, sell, barter, exchange, or otherwise supply commercial fertilizer in this state.

(10) "Distributor" means a person who distributes.

(11) "Fertilizer material" means a commercial fertilizer that either:

(a) Contains important quantities of no more than one of the primary plant nutrients: Nitrogen, phosphate, and potash;

(b) Has eighty-five percent or more of its plant nutrient content present in the form of a single chemical compound; or

(c) Is derived from a plant or animal residue or by-product or natural material deposit that has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(12) "Grade" means the percentage of total nitrogen, available phosphoric acid, and soluble potash stated in whole numbers in the same terms, order, and percentages as in the "guaranteed analysis," unless otherwise allowed by a rule adopted by the department. Specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or potash. Fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units.

(13) "Guaranteed analysis."

(a) Until the director prescribes an alternative form of "guaranteed analysis" by rule the term "guaranteed analysis" shall mean the minimum percentage of plant nutrients claimed in the following order and form:

Total nitrogen (N)	.....	percent
Available phosphoric acid (P ₂ O ₅)	....	percent
Soluble potash (K ₂ O)	.....	percent

The percentage shall be stated in whole numbers unless otherwise allowed by the department by rule.

The "guaranteed analysis" may also include elemental guarantees for phosphorus (P) and potassium (K).

(b) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphoric acid or degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium shall be as allowed or required by rule of the department. The guarantees for such other nutrients shall be expressed in the form of the element.

(d) The guaranteed analysis for limes shall include the percentage of calcium or magnesium expressed as their carbonate; the calcium carbonate equivalent as determined by methods prescribed by the association of official analytical chemists; and the minimum percentage of material that will pass respectively a one hundred mesh, sixty mesh, and ten mesh sieve. The mesh size declaration may also include the percentage of material that will pass additional mesh sizes.

(e) In commercial fertilizer, the principal constituent of which is calcium sulfate (gypsum), the percentage of calcium sulfate (CaSO₄·2H₂O) shall be given along with the percentage of total sulfur.

(14) "Imported fertilizer" means any fertilizer distributed into Washington from any other state, province, or country.

(15) "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer.

(16) "Labeling" includes all written, printed, or graphic matter, upon or accompanying a commercial fertilizer, or advertisement, brochures, posters, television, and radio announcements used in promoting the sale of such fertilizer.

(17) "Licensee" means the person who receives a license to distribute a commercial fertilizer under the provisions of this chapter.

(18) "Lime" means a substance or a mixture of substances, the principal constituent of which is calcium or magnesium carbonate, hydroxide, or oxide, singly or combined.

(19) "Manipulation" means processed or treated in any manner, including drying to a moisture content less than thirty percent.

(20) "Manufacture" means to compound, produce, granulate, mix, blend, repackage, or otherwise alter the composition of fertilizer materials.

(21) "Micronutrients" are: Boron; chlorine; cobalt; copper; iron; manganese; molybdenum; sodium; and zinc.

(22) "Micronutrient fertilizer" means a produced or imported commercial fertilizer that contains commercially valuable concentrations of micronutrients but does not contain commercially valuable concentrations of nitrogen, phosphoric acid, available phosphorus, potash, calcium, magnesium, or sulfur.

(23) "Official sample" means a sample of commercial fertilizer taken by the department and designated as "official" by the department.

(24) "Organic waste-derived material" means grass clippings, leaves, weeds, bark, plantings, prunings, and other vegetative wastes, uncontaminated wood waste from logging and milling operations, food wastes, food processing wastes, and materials derived from these wastes through composting. "Organic waste-derived material" does not include products that include biosolids.

(25) "Packaged fertilizer" means commercial fertilizers, either agricultural or specialty, distributed in nonbulk form.

(26) "Person" means an individual, firm, brokerage, partnership, corporation, company, society, or association.

(27) "Percent" or "percentage" means the percentage by weight.

(28) "Produce" means to compound or fabricate a commercial fertilizer through a physical or chemical process, or through mining. "Produce" does not include mixing, blending, or repackaging commercial fertilizer products.

(29) "Registrant" means the person who registers commercial fertilizer under the provisions of this chapter.

(30) "Specialty fertilizer" means a commercial fertilizer distributed primarily for nonfarm use, such as, but not limited to, use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries.

(31) "Ton" means the net weight of two thousand pounds avoirdupois.

(32) "Total nutrients" means the sum of the percentages of total nitrogen, available phosphoric acid, and soluble potash as guaranteed and as determined by analysis.

(33)(a) "Turf" means land, including residential property, commercial property, and publicly owned land, which is planted in closely mowed, managed grass.

(b) "Turf" does not include pasture land, land used to grow grass for sod, or any other land used for agricultural production or residential vegetable or flower gardening.

(34) "Turf fertilizer" means a commercial fertilizer that is labeled for use on turf.

(35) "Washington application rate" is calculated by using an averaging period of up to four consecutive years that incorporates agronomic rates that are representative of soil, crop rotation, and climatic conditions in Washington state.

(36) "Waste-derived fertilizer" means a commercial fertilizer that is derived in whole or in part from solid waste as defined in chapter 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include fertilizers derived from biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW. [2011 c 73 § 1; 1998 c 36 § 2; 1997 c 427 § 1; 1993 c 183 § 1; 1987 c 45 § 1; 1967 ex.s. c 22 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 c 73: "This act takes effect January 1, 2013." [2011 c 73 § 5.]

Additional notes found at www.leg.wa.gov

15.54.470 Violations—Department discretion—Duty of prosecuting attorney—Injunctions. (Effective January 1, 2013.) (1) Except for violations of RCW 15.54.500, any person who violates any provision of this chapter shall be guilty of a misdemeanor, and the fines collected shall be disposed of as provided under RCW 15.54.480.

(2) Nothing in this chapter shall be considered as requiring the department to report for prosecution or to cancel the registration of a commercial fertilizer product or to stop the sale of fertilizers for violations of this chapter, when violations are of a minor character, and/or when the department believes that the public interest will be served and protected by a suitable notice of the violation in writing.

(3) It shall be the duty of each prosecuting attorney to whom any violation of this chapter is reported, to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the department reports a violation of this chapter for such prosecution, an opportunity shall be given the distributor to present his or her view in writing or orally to the department.

(4) The department is hereby authorized to apply for, and the court authorized to grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rule adopted under this chapter, notwithstanding the existence of any other remedy at law. Any such injunction shall be issued without bond. [2011 c 73 § 3; 1998 c 36 § 11; 1993 c 183 § 13; 1967 ex.s. c 22 § 35.]

Effective date—2011 c 73: See note following RCW 15.54.270.

Additional notes found at www.leg.wa.gov

15.54.500 Turf fertilizer—Prohibitions on application, sales, and retail display. (Effective January 1, 2013.)

(1) A person may not:

(a) Except as otherwise provided in this section, apply turf fertilizer that is labeled as containing phosphorus to turf;

(b) Apply turf fertilizer labeled as containing phosphorus to turf when the ground is frozen;

(c) Intentionally apply turf fertilizer labeled as containing phosphorus to an impervious surface;

(d) Except as otherwise provided in this section, sell turf fertilizer that is labeled as containing phosphorus; or

(e) Display turf fertilizer that is labeled as containing phosphorus in a retail store unless the turf fertilizer is also clearly labeled for a use permitted by this section.

(2) The prohibitions in this section on the application, sale, and retail display of turf fertilizer that is labeled as containing phosphorus, other than the prohibitions in subsection (1)(b) and (c) of this section, do not apply in the following instances:

(a) Application for the purpose of establishing grass or repairing damaged grass, using either seeds or sod, during the growing season in which the grass is established;

(b) Application to an area if the soil in the area is deficient in plant available phosphorus, as shown by a soil test performed no more than thirty-six months before the application; or

(c) Application to pasture, interior house plants, flower and vegetable gardens located on either public or private property, land used to grow grass for sod, or any land used for agricultural or silvicultural production.

(3) If a retailer can show proof that a product prohibited for sale under subsection (1)(d) and (e) of this section was in stock and physically in the retail location before January 1, 2012, that retail location may sell that product until it is sold out.

(4)(a) Nothing in this section:

(i) Requires the enforcement or monitoring of compliance with this section by local governments; or

(ii) Requires local governments to participate in the administration of this section, including the verification of soil tests under subsection (2)(b) of this section.

(b) A city or county may not adopt a local ordinance regarding the application or sale of turf fertilizer that is labeled as containing phosphorus that is less restrictive than this section. [2011 c 73 § 2.]

Effective date—2011 c 73: See note following RCW 15.54.270.

Chapter 15.58 RCW

WASHINGTON PESTICIDE CONTROL ACT

Sections

15.58.030 Definitions.
15.58.380 Repealed.

15.58.030 Definitions. As used in this chapter the words and phrases defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(2) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(3) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless

and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(4) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspection, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

(5) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(6) "Department" means the Washington state department of agriculture.

(7) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(8) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, or to destroy, control, repel or mitigate fungi, nematodes, or such other pests, as may be designated by the director, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(9) "Director" means the director of the department or a duly authorized representative.

(10) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(11) "EPA" means the United States environmental protection agency.

(12) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(13) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(14) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living persons or other animals.

(15) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(16) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(17) "Inert ingredient" means an ingredient which is not an active ingredient.

(18) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic. The ingredient statement for a spray adjuvant must be consistent with the labeling requirements adopted by rule.

(19) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously seg-

mented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(20) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(21) "Inspection control number" means a number obtained from the department that is recorded on wood destroying organism inspection reports issued by a structural pest inspector in conjunction with the transfer, exchange, or refinancing of any structure.

(22) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, device, or immediate container, and the outside container or wrapper of the retail package.

(23) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide, device, or any of its containers or wrappers;

(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States departments of agriculture; interior; education; health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(24) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(25) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(26) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(27) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

(28) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(29) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in a living person or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(30) "Pest control consultant" means any individual who sells or offers for sale at other than a licensed pesticide dealer

outlet or location where they are employed, or who offers or supplies technical advice or makes recommendations to the user of:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(31) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

(32) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(33) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(34) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(35) "Registrant" means the person registering any pesticide under the provisions of this chapter.

(36) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(37) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

(38) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

(39) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

(40) "Spray adjuvant" means any product intended to be used with a pesticide as an aid to the application or to the

effect of the pesticide, and which is in a package or container separate from the pesticide. Spray adjuvant includes, but is not limited to, acidifiers, compatibility agents, crop oil concentrates, defoaming agents, drift control agents, modified vegetable oil concentrates, nonionic surfactants, organosilicone surfactants, stickers, and water conditioning agents. Spray adjuvant does not include products that are only intended to mark the location where a pesticide is applied.

(41) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

(42) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(43) "Weed" means any plant which grows where not wanted.

(44) "Wood destroying organism" means insects or fungi that consume, excavate, develop in, or otherwise modify the integrity of wood or wood products. Wood destroying organism includes, but is not limited to, carpenter ants, moisture ants, subterranean termites, dampwood termites, beetles in the family Anobiidae, and wood decay fungi (wood rot).

(45) "Wood destroying organism inspection report" means any written document that reports or comments on the presence or absence of wood destroying organisms, their damage, and/or conducive conditions leading to the establishment of such organisms. [2011 c 103 § 35; 2004 c 100 § 6; 2003 c 212 § 1; 2000 c 96 § 1; 1992 c 170 § 1; 1991 c 264 § 1; 1989 c 380 § 1; 1982 c 182 § 26; 1979 c 146 § 1; 1971 ex.s. c 190 § 3.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2004 c 100: See note following RCW 17.21.020.

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

Chapter 15.60 RCW APIARIES

Sections

15.60.065	Apiary coordinated areas—Hearing to establish.
15.60.085	Apiary coordinated areas—Boundary change procedure.
15.60.095	Apiary coordinated areas within certain counties.

15.60.065 Apiary coordinated areas—Hearing to establish. When the county legislative authority determines that it would be desirable to establish an apiary coordinated area or areas in their county, they shall make an order fixing a time and place when a hearing will be held, notice of which shall be published at least once each week for two successive weeks in a newspaper having general circulation within the county. It shall be the duty of the county legislative authority at the time fixed for such hearing, to hear all persons interested in the establishment of apiary coordinated areas as defined in this section and RCW 15.60.075 and 15.60.085.

[2011 c 103 § 5; 1993 c 89 § 18; 1989 c 354 § 65. Formerly RCW 15.60.180.]

Purpose—2011 c 103: See note following RCW 15.26.120.
Additional notes found at www.leg.wa.gov

15.60.085 Apiary coordinated areas—Boundary change procedure. When the county legislative authority of any county deems it advisable to change the boundary or boundaries of any apiary coordinated area, a hearing shall be held in the same manner as provided in RCW 15.60.065. If the county legislative authority decides to change the boundary or boundaries of any apiary coordinated area or areas, they shall within thirty days after the conclusion of such hearing make an order describing the change or changes. Such order shall be entered upon the records of the county and published in a newspaper having general circulation in the county once each week for four successive weeks. [2011 c 103 § 6; 1989 c 354 § 68. Formerly RCW 15.60.210.]

Purpose—2011 c 103: See note following RCW 15.26.120.
Additional notes found at www.leg.wa.gov

15.60.095 Apiary coordinated areas within certain counties. The county legislative authority of any county with a population of from forty thousand to less than seventy thousand located east of the Cascade crest and bordering in the southern side of the Snake river shall have the power to designate by an order made and published, as provided in RCW 15.60.075, certain territories as apiary coordinated areas in which they may designate the number of colonies per apiary, the distance between apiaries, the minimum required setback distance from property lines, and the time of year the regulations shall be in effect. No territory so designated shall be less than two square miles in area. [2011 c 103 § 7; 1993 c 89 § 20. Formerly RCW 15.60.220.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Chapter 15.62 RCW HONEY BEE COMMISSION

Sections

15.62.190 Repealed.

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

Chapter 15.65 RCW WASHINGTON STATE AGRICULTURAL COMMODITY BOARDS

Sections

15.65.020 Definitions.
15.65.033 Regulating agricultural commodities—Laws applicable.
15.65.243 When director appoints majority of the board—Nominations—Advisory vote—Notice—Director selects either of two candidates receiving the most votes.
15.65.280 Powers and duties of commodity board—Reservation of power to director. (*Effective until January 1, 2012.*)
15.65.280 Powers and duties of commodity board—Reservation of power to director. (*Effective January 1, 2012.*)
15.65.375 Agreement and order provisions—Participation in proceedings concerning regulation of pesticides or agricultural chemicals.

15.65.510 Information and inspections required—Hearings—Confidentiality and disclosures.
15.65.550 Duty of attorney general and prosecuting attorneys—Investigation and hearing by director.

15.65.020 Definitions. The following terms are hereby defined:

(1) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

(2) "Affected parties" means any producer, affected producer, handler, or commodity board member.

(3) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing within such marketing area: PROVIDED, That in the case of marketing agreements "affected unit" shall include only those units which are produced by producers or handled by handlers who have assented to such agreement.

(4) "Agricultural commodity" means any of the following commodities or products: Llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including, but not limited to, products qualifying as organic products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, either in its natural or processed state, including beehives containing bees and honey and Christmas trees but not including timber or timber products. The director is hereby authorized to determine (on the basis of common usage and practice) what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(5) "Assessment" means the monetary amount established in a marketing order or agreement that is to be paid by each affected producer to a commodity board in accordance with the schedule established in the marketing order or agreement.

(6) "Commercial quantities" as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as the director finds are not less than the minimum which a prudent person engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. "Commercial quantities" as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent person engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the handling operation in which such commodity or product thereof is so handled. In either case, the director may in his or her discretion: (a)

Determine that substantial quantity is any amount above zero; and (b) apply the quantity so determined on a uniform rule applicable alike to all persons which he or she finds to be similarly situated.

(7) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

(8) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(9) "Department" means the department of agriculture of the state of Washington.

(10) "Director" means the director of agriculture of the state of Washington or his or her duly appointed representative. The phrase "director or his or her designee" means the director unless, in the provisions of any marketing agreement or order, he or she has designated an administrator, board, or other designee to act in the matter designated, in which case "director or his or her designee" means for such order or agreement the administrator, board, or other person(s) so designated and not the director.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity or storage of a frozen agricultural commodity which was not produced by him or her. "Handler" does not mean a common carrier used to transport an agricultural commodity. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a handler.

(12) "List of affected handlers" means a list containing the names and addresses of affected handlers. This list shall contain the names and addresses of all affected handlers and, if requested by the director, the amount, by unit, of the affected commodity handled during a designated period under this chapter.

(13) "List of affected parties" means a list containing the names and mailing addresses of affected parties. This list shall contain the names and addresses of all affected parties and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(14) "List of affected producers" means a list containing the names and mailing addresses of affected producers. This list shall contain the names and addresses of all affected producers and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(15) "Mail" or "send" for purposes of any notice relating to rule making, referenda, or elections means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(16) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this chapter.

(17) "Marketing order" means an order adopted by the director under this chapter that establishes a commodity board for an agricultural commodity or agricultural commodities with like or common qualities or producers.

(18) "Member of a cooperative association" means any producer who markets his or her product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product.

(19) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(20) "Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals, or any unit or agency of local, state, or federal government.

(21) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer who is subject to a marketing order or agreement. "To produce" means to act as a producer. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(22) "Producer-handler" means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he or she produces, and a handler with respect to the agricultural commodities which he or she handles, including those produced by himself or herself.

(23) "Producer marketing" or "marketed by producers" means any or all operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include: (a) selling any agricultural commodity produced by such producer(s) to any handler; (b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

(24) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(25) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this chapter. "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(26) "Rule-making proceedings" means the rule-making provisions as outlined in chapter 34.05 RCW.

(27) "Section" means a section of this chapter unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and

neuter. The singular number includes the plural and the plural includes the singular.

(28) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(29) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

(30) "Vacancy" means that a board member leaves or is removed from a board position prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position.

(31) "Volume of production" means the percent of the average volume of production of the affected commodity of those on the list of affected parties or affected producers for a production period. For the purposes of this chapter, a production period is a minimum three-year period or as specified in the marketing order or agreement. [2011 c 103 § 23. Prior: 2009 c 549 § 1007; 2002 c 313 § 1; 1993 c 80 § 2; 1986 c 203 § 15; prior: 1985 c 457 § 13; 1985 c 261 § 1; 1975 1st ex.s. c 7 § 2; 1961 c 256 § 2.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: "This act takes effect July 1, 2002, except for sections 1, 15, 17, 29, 30, 39, 45, 57, 58, 137, and 138 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 2, 2002]." [2002 c 313 § 139.]

Additional notes found at www.leg.wa.gov

15.65.033 Regulating agricultural commodities—Laws applicable. This chapter and the rules adopted under it are only one aspect of the comprehensively regulated agricultural industry.

(1) Other laws applicable to agricultural commodities include the following chapters and the rules adopted thereunder:

- Chapter 15.08 RCW Horticultural pests and diseases;
- Chapter 15.13 RCW Horticultural plants, Christmas trees, and facilities—Inspection and licensing;
- Chapter 15.14 RCW Planting stock;
- Chapter 15.15 RCW Certified seed potatoes;
- Chapter 15.17 RCW Standards of grades and packs;
- Chapter 15.19 RCW Certification and inspection of ginseng;
- Chapter 15.30 RCW Controlled atmosphere storage of fruits and vegetables;
- Chapter 15.49 RCW Seeds;
- Chapter 15.53 RCW Commercial feed;
- Chapter 15.54 RCW Fertilizers, minerals, and limes;
- Chapter 15.58 RCW Washington pesticide control act;
- Chapter 15.60 RCW Apiaries;
- Chapter 15.64 RCW Farm marketing;
- Chapter 15.83 RCW Agricultural marketing and fair practices;
- Chapter 15.85 RCW Aquaculture marketing;
- Chapter 15.86 RCW Organic products;
- Chapter 15.92 RCW Center for sustaining agriculture and natural resources;
- Chapter 17.24 RCW Insect pests and plant diseases;
- Chapter 19.94 RCW Weights and measures;

Chapter 20.01 RCW Agricultural products—Commission merchants, dealers, brokers, buyers, agents;

Chapter 22.09 RCW Agricultural commodities;

Chapter 69.04 RCW Food, drugs, cosmetics, and poisons including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

Chapter 69.07 RCW Washington food processing act;

Chapter 69.25 RCW Washington wholesome eggs and egg products act;

Chapter 69.28 RCW Honey;

7 U.S.C., section 136, Federal insecticide, fungicide, and rodenticide act.

(2) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the dry pea and lentil industry is regulated by or must comply with the additional laws and rules adopted under 7 U.S.C., chapter 38, agricultural marketing act. [2011 c 103 § 24; 2002 c 313 § 3.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.243 When director appoints majority of the board—Nominations—Advisory vote—Notice—Director selects either of two candidates receiving the most votes. (1) This section applies when the director appoints a majority of the board positions as set forth under RCW 15.65.220(3).

(2) Candidates for director-appointed board positions on a commodity board shall be nominated under RCW 15.65.250.

(3) The director shall cause an advisory vote to be held for the director-appointed positions. Not less than ten days in advance of the vote, advisory ballots shall be mailed to all producers or handlers entitled to vote, if their names appear upon the list of affected parties or affected producers or handlers, whichever is applicable. Notice of every advisory vote for board membership shall be published in a newspaper of general circulation within the affected area defined in the order or agreement not less than ten days in advance of the date of the vote. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(4) The candidates whose names are forwarded to the director for potential appointment shall submit to the director a letter stating why the candidate wishes to be appointed to the board. The director may select either person for the position. [2011 c 103 § 18; 2002 c 313 § 24.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.280 Powers and duties of commodity board—Reservation of power to director. (Effective until January 1, 2012.) The powers and duties of the board shall be:

(1) To elect a chair and such other officers as it deems advisable;

(2) To advise and counsel the director with respect to the administration and conduct of such marketing agreement or order;

(3) To recommend to the director administrative rules and orders and amendments thereto for the exercise of his or her powers in connection with such agreement or order;

(4) To advise the director upon all assessments provided pursuant to the terms of such agreement or order and upon the collection, deposit, withdrawal, disbursement and paying out of all moneys;

(5) To assist the director in the collection of such necessary information and data as the director may deem necessary in the proper administration of this chapter;

(6) To administer the order or agreement as its administrative board if the director designates it so to do in such order or agreement;

(7) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the board's marketing order or agreement;

(8) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in the board's marketing order or agreement. Personal service contracts must comply with chapter 39.29 RCW;

(9) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in the board's marketing order or agreement;

(10) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a board. The retention of a private attorney is subject to review by the office of the attorney general;

(11) To engage in appropriate fund-raising activities for the purpose of supporting activities of the board authorized by the marketing order or agreement;

(12) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(13) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of affected commodities including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(14) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the marketing order or agreement, and data on the value of each producer's production for a minimum three-year period;

(15) To maintain a list of the names and addresses of persons who handle the affected commodity within the affected area and data on the amount and value of the commodity handled for a minimum three-year period by each person; and

(16) To perform such other duties as the director may prescribe in the marketing agreement or order.

Any agreement or order under which the commodity board administers the order or agreement shall (if so

requested by the affected producers within the affected area in the proposal or promulgation hearing) contain provisions whereby the director reserves the power to approve or disapprove every order, rule or directive issued by the board, in which event such approval or disapproval shall be based on whether or not the director believes the board's action has been carried out in conformance with the purposes of this chapter. [2011 c 103 § 14; 2010 c 8 § 6075; 2002 c 313 § 29; 2001 c 315 § 6; 1985 c 261 § 11; 1961 c 256 § 28.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

**15.65.280 Powers and duties of commodity board—
Reservation of power to director. (Effective January 1, 2012.)** The powers and duties of the board shall be:

(1) To elect a chair and such other officers as it deems advisable;

(2) To advise and counsel the director with respect to the administration and conduct of such marketing agreement or order;

(3) To recommend to the director administrative rules and orders and amendments thereto for the exercise of his or her powers in connection with such agreement or order;

(4) To advise the director upon all assessments provided pursuant to the terms of such agreement or order and upon the collection, deposit, withdrawal, disbursement and paying out of all moneys;

(5) To assist the director in the collection of such necessary information and data as the director may deem necessary in the proper administration of this chapter;

(6) To administer the order or agreement as its administrative board if the director designates it so to do in such order or agreement;

(7) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the board's marketing order or agreement;

(8) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in the board's marketing order or agreement. Personal service contracts must comply with chapter 39.29 RCW;

(9) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in the board's marketing order or agreement;

(10) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a board. The retention of a private attorney is subject to review by the office of the attorney general;

(11) To engage in appropriate fund-raising activities for the purpose of supporting activities of the board authorized by the marketing order or agreement;

(12) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(13) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of affected commodities

including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(14) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the marketing order or agreement, and data on the value of each producer's production for a minimum three-year period;

(15) To maintain a list of the names and addresses of persons who handle the affected commodity within the affected area and data on the amount and value of the commodity handled for a minimum three-year period by each person; and

(16) To perform such other duties as the director may prescribe in the marketing agreement or order.

Any agreement or order under which the commodity board administers the order or agreement shall (if so requested by the affected producers within the affected area in the proposal or promulgation hearing) contain provisions whereby the director reserves the power to approve or disapprove every order, rule or directive issued by the board, in which event such approval or disapproval shall be based on whether or not the director believes the board's action has been carried out in conformance with the purposes of this chapter. [2011 c 103 § 14; 2011 c 60 § 1; 2010 c 8 § 6075; 2002 c 313 § 29; 2001 c 315 § 6; 1985 c 261 § 11; 1961 c 256 § 28.]

Reviser's note: This section was amended by 2011 c 60 § 1 and by 2011 c 103 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.375 Agreement and order provisions—Participation in proceedings concerning regulation of pesticides or agricultural chemicals. Any marketing agreement or order may authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030 or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity board funds for this purpose. [2011 c 103 § 8; 2002 c 313 § 32; 1988 c 54 § 1.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.65.510 Information and inspections required—Hearings—Confidentiality and disclosures. All parties to a marketing agreement, all persons subject to a marketing order, and all producers, dealers, and handlers of a commodity governed by the provisions of a marketing agreement or order shall severally from time to time, upon the request of the director, the director's designee, or the commodity board established under the marketing agreement or order, furnish such information and permit such inspections as the director, the director's designee, or the commodity board finds to be necessary to effectuate the declared policies of this chapter and the purposes of such agreement or order. Information

and inspections may also be required by the director, the director's designee, or the commodity board to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated such policies and purposes, or to determine whether or not there has been any abuse of the privilege of exemption from laws relating to trusts, monopolies and restraints of trade. Such information shall be furnished in accordance with forms and reports to be prescribed by the director, the director's designee, or the commodity board. The director, the director's designee, or a designee of the commodity board is hereby authorized to inspect crops and examine such books, papers, records, copies of tax reports, accounts, correspondence, contracts, documents, or memoranda as he or she deems relevant and which are within the control:

(1) Of any such party to such marketing agreement or, any person subject to any marketing order from whom such report was requested, or

(2) Of any person having, either directly or indirectly, actual or legal control of or over such party, producer or handler of such records, or

(3) Of any subsidiary of any such party, producer, handler or person.

To carry out the purposes of this section the director or the director's designee upon giving due notice, may hold hearings, take testimony, administer oaths, subpoena witnesses and issue subpoenas for the production of books, records, documents or other writings of any kind. RCW 15.65.090, 15.65.100 and 15.65.110, together with such other regulations consistent therewith as the director may from time to time prescribe, shall apply with respect to any such hearing. All information furnished to or acquired by the director or the director's designee pursuant to this section shall be kept confidential by all officers and employees of the director or the director's designee and only such information so furnished or acquired as the director deems relevant shall be disclosed by the director or them, and then only in a suit or administrative hearing brought at the direction or upon the request of the director or to which the director or the director's designee or any officer of the state of Washington is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired.

Nothing in this section shall prohibit:

(1) The issuance of general statements based upon the reports of a number of persons subject to any marketing agreement or order, which statements do not identify the information furnished by any person; or

(2) The publication by the director or the director's designee of the name of any person violating any marketing agreement or order, together with a statement of the particular provisions and the manner of the violation of the marketing agreement or order so violated by such person. [2011 c 103 § 19; 1989 c 354 § 29; 1961 c 256 § 51.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

15.65.550 Duty of attorney general and prosecuting attorneys—Investigation and hearing by director. Upon the request of the director or his or her designee, it shall be the

duty of the attorney general of the state of Washington and of the several prosecuting attorneys in their respective counties to institute proceedings to enforce the remedies and to collect the moneys provided for or pursuant to this chapter. Whenever the director and/or his or her designee has reason to believe that any person has violated or is violating the provisions of any marketing agreement or order issued pursuant to this chapter, the director and/or his or her designee shall have and is hereby granted the power to institute an investigation and, after due notice to such person, to conduct a hearing in order to determine the facts for the purpose of referring the matter to the attorney general or to the appropriate prosecuting attorney for appropriate action. The provisions contained in RCW 15.65.090, 15.65.100 and 15.65.110 shall apply with respect to such hearings. [2011 c 103 § 20; 2010 c 8 § 6091; 1961 c 256 § 55.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Chapter 15.66 RCW

WASHINGTON STATE AGRICULTURAL COMMODITY COMMISSIONS

Sections

15.66.010	Definitions.
15.66.017	Regulating agricultural commodities—Laws applicable.
15.66.113	When director appoints majority of the commission—Nominations—Advisory vote—Notice—Director selects either of two candidates receiving the most votes.
15.66.140	Commodity commission—Powers and duties. (<i>Effective until January 1, 2012.</i>)
15.66.140	Commodity commission—Powers and duties. (<i>Effective January 1, 2012.</i>)
15.66.150	Annual assessments—Rate—Collection.
15.66.245	Marketing agreement or order—Authority for participation in proceedings concerning regulation of pesticides or agricultural chemicals.

15.66.010 Definitions. For the purposes of this chapter:

- (1) "Affected commodity" means the agricultural commodity that is specified in the marketing order.
- (2) "Affected handler" means any handler of an affected commodity.
- (3) "Affected parties" means any producer, affected producer, handler, or commodity commission member.
- (4) "Affected producer" means any producer who is subject to a marketing order.
- (5) "Agricultural commodity" means any of the following commodities or products: Llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, vegetable, and/or animal product, including, but not limited to, products qualifying as organic products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, within its natural or processed state, including beehives containing bees and honey and Christmas trees but not including timber or timber products. The director is authorized to determine what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.
- (6) "Assessment" means the monetary amount established in a marketing order that is to be paid by each affected producer to a commission in accordance with the schedule established in the marketing order.

(7) "Commodity commission" or "commission" means a commission formed to carry out the purposes of this chapter under a particular marketing order concerning an affected commodity.

(8) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of Congress of the United States, Feb. 18, 1922, chapter 57, sections 1 and 2, 42 U.S. Statutes at Large 388 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(9) "Department" means the department of agriculture of the state of Washington.

(10) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act for him or her concerning some matter under this chapter.

(11) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of an agricultural commodity that is not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(12) "List of affected handlers" means a list containing the names and addresses of affected handlers. This list must contain the names and addresses of all affected handlers and, if requested by the director, the amount, by unit, of the affected commodity handled during a designated period under this chapter.

(13) "List of affected parties" means a list containing the names and mailing addresses of affected parties. This list must contain the names and addresses of all affected parties and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(14) "List of affected producers" means a list containing the names and mailing addresses of affected producers. This list must contain the names and addresses of all affected producers and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(15) "Mail" or "send," for purposes of any notice relating to rule making, referenda, or elections, means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(16) "Marketing order" means an order adopted by rule by the director that establishes a commodity commission for an agricultural commodity pursuant to this chapter.

(17) "Member of a cooperative association" or "member" means any producer of an agricultural commodity who markets his or her product through such cooperative association and who is a voting stockholder of or has a vote in the control of or is under a marketing agreement with such cooperative association with respect to such product.

(18) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(19) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals or any unit or agency of local, state, or federal government.

(20) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity. "To produce" means to act as a producer. For the purposes of this chapter, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(21) "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(22) "Rule-making proceedings" means rule making under chapter 34.05 RCW.

(23) "Unfair trade practice" means any practice which is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16 and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the provisions of the act of Congress of the United States, September 26, 1914, chapter 311, section 5, 38 U.S. Statutes at Large 719 as amended, known as the "Federal Trade Commission Act of 1914", or the violation of or failure accurately to label as to grades and standards in accordance with any lawfully established grades or standards or labels.

(24) "Unit" means a unit of volume, quantity or other measure in which an agricultural commodity is commonly measured.

(25) "Vacancy" means that a commission member leaves or is removed from a position on the commission prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position.

(26) "Volume of production" means the percent of the average volume of production of the affected commodity of those on the list of affected parties or affected producers for a production period. For the purposes of this chapter, a production period is a minimum three-year period or as specified in the marketing order. [2011 c 103 § 25; 2002 c 313 § 39; 1993 c 80 § 3; 1986 c 203 § 16; 1985 c 457 § 14; 1983 c 288 § 6; 1982 c 35 § 180; 1975 1st ex.s. c 7 § 6; 1961 c 11 § 15.66.010. Prior: 1955 c 191 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Additional notes found at www.leg.wa.gov

15.66.017 Regulating agricultural commodities—Laws applicable. This chapter and the rules adopted under it are only one aspect of the comprehensively regulated agricultural industry.

[2011 RCW Supp—page 250]

(1) Other laws applicable to agricultural commodities include the following chapters and the rules adopted thereunder:

Chapter 15.08 RCW Horticultural pests and diseases;
Chapter 15.13 RCW Horticultural plants, Christmas trees, and facilities—Inspection and licensing;
Chapter 15.14 RCW Planting stock;
Chapter 15.15 RCW Certified seed potatoes;
Chapter 15.17 RCW Standards of grades and packs;
Chapter 15.19 RCW Certification and inspection of ginseng;

Chapter 15.30 RCW Controlled atmosphere storage of fruits and vegetables;

Chapter 15.49 RCW Seeds;

Chapter 15.53 RCW Commercial feed;

Chapter 15.54 RCW Fertilizers, minerals, and limes;

Chapter 15.58 RCW Washington pesticide control act;

Chapter 15.60 RCW Apiaries;

Chapter 15.64 RCW Farm marketing;

Chapter 15.83 RCW Agricultural marketing and fair practices;

Chapter 15.85 RCW Aquaculture marketing;

Chapter 15.86 RCW Organic products;

Chapter 15.92 RCW Center for sustaining agriculture and natural resources;

Chapter 17.24 RCW Insect pests and plant diseases;

Chapter 19.94 RCW Weights and measures;

Chapter 20.01 RCW Agricultural products—Commission merchants, dealers, brokers, buyers, agents;

Chapter 22.09 RCW Agricultural commodities;

Chapter 69.04 RCW Food, drugs, cosmetics, and poisons including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

Chapter 69.07 RCW Washington food processing act;

Chapter 69.25 RCW Washington wholesome eggs and egg products act;

Chapter 69.28 RCW Honey;

7 U.S.C., section 136, Federal insecticide, fungicide, and rodenticide act.

(2) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the potato industry is regulated by or must comply with the following additional laws and the rules or regulations adopted thereunder:

(a) 7 C.F.R., Part 51, United States standards for grades of potatoes;

(b) 7 C.F.R., Part 946, Federal marketing order for Irish potatoes grown in Washington;

(c) 7 C.F.R., Part 1207, Potato research and promotion plan.

(3) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry as a whole, the wheat and barley industries are regulated by or must comply with the following additional laws and the rules adopted thereunder:

(a) 7 U.S.C., section 1621, Agricultural marketing act;

(b) Chapter 70.94 RCW, Washington clean air act, agricultural burning.

(4) In addition to the laws and regulations listed in subsection (1) of this section that apply to the agricultural industry

try as a whole, the poultry industry is regulated by or must comply with the following additional laws and the rules adopted thereunder:

- (a) 21 U.S.C., chapter 10, Poultry and poultry products inspection;
- (b) 21 U.S.C., chapter 9, Packers and stockyards;
- (c) 7 U.S.C., section 1621, Agricultural marketing act;
- (d) Washington fryer commission labeling standards. [2011 c 103 § 26; 2002 c 313 § 41.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.113 When director appoints majority of the commission—Nominations—Advisory vote—Notice—Director selects either of two candidates receiving the most votes. (1) This section applies when the director appoints a majority of the positions of the commission as set forth under RCW 15.66.110(3).

(2) Candidates for director-appointed positions on a commission shall be nominated under RCW 15.66.120(1).

(3) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term, the director shall cause an advisory vote to be held for the director-appointed positions. Advisory ballots shall be mailed to all affected producers and shall be returned to the director not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the commission. In the event there are only two candidates nominated for a position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(4) The candidates whose names are forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select either person for the position. [2011 c 103 § 21; 2002 c 313 § 52.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.140 Commodity commission—Powers and duties. (Effective until January 1, 2012.) Every commodity commission shall have such powers and duties in accordance with provisions of this chapter as may be provided in the marketing order and shall have the following powers and duties:

(1) To elect a chair and such other officers as determined advisable;

(2) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order;

(3) To administer, enforce, direct and control the provisions of the marketing order and of this chapter relating thereto;

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(5) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey the same;

(6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order;

(7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(8) Borrow money and incur indebtedness;

(9) Make necessary disbursements for routine operating expenses;

(10) To expend funds for commodity-related education, training, and leadership programs as each commission deems expedient;

(11) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the commission's marketing order;

(12) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in the commission's marketing order. Personal service contracts must comply with chapter 39.29 RCW;

(13) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in the commission's marketing order;

(14) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(15) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a commission. The retention of a private attorney is subject to review by the office of the attorney general;

(16) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by the marketing order;

(17) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of affected commodities including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(18) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of the marketing order and data on the value of each producer's production for a minimum three-year period;

(19) To maintain a list of the names and addresses of persons who handle the affected commodity within the affected area and data on the amount and value of the commodity handled for a minimum three-year period by each person;

(20) To request records and audit the records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid;

(21) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity; and

(22) Such other powers and duties that are necessary to carry out the purposes of this chapter. [2011 c 103 § 15; 2003 c 396 § 2; 2002 c 313 § 57; 2001 c 315 § 3; 1985 c 261 § 20; 1982 c 81 § 2; 1961 c 11 § 15.66.140. Prior: 1955 c 191 § 14.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.140 Commodity commission—Powers and duties. (*Effective January 1, 2012.*) Every commodity commission shall have such powers and duties in accordance with provisions of this chapter as may be provided in the marketing order and shall have the following powers and duties:

(1) To elect a chair and such other officers as determined advisable;

(2) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under the marketing order;

(3) To administer, enforce, direct and control the provisions of the marketing order and of this chapter relating thereto;

(4) To employ and discharge at its discretion such administrators and additional personnel, attorneys, advertising and research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(5) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey the same;

(6) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of this chapter and of the marketing order;

(7) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(8) Borrow money and incur indebtedness;

(9) Make necessary disbursements for routine operating expenses;

(10) To expend funds for commodity-related education, training, and leadership programs as each commission deems expedient;

(11) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in the commission's marketing order;

(12) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes provided in the commission's marketing order. Personal service contracts must comply with chapter 39.29 RCW;

(13) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and

public agencies to carry out the purposes provided in the commission's marketing order;

(14) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of an affected commodity;

(15) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of a commission. The retention of a private attorney is subject to review by the office of the attorney general;

(16) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by the marketing order;

(17) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of affected commodities including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(18) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of the marketing order and data on the value of each producer's production for a minimum three-year period;

(19) To maintain a list of the names and addresses of persons who handle the affected commodity within the affected area and data on the amount and value of the commodity handled for a minimum three-year period by each person;

(20) To request records and audit the records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid;

(21) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity; and

(22) Such other powers and duties that are necessary to carry out the purposes of this chapter. [2011 c 103 § 15; 2011 c 60 § 2; 2003 c 396 § 2; 2002 c 313 § 57; 2001 c 315 § 3; 1985 c 261 § 20; 1982 c 81 § 2; 1961 c 11 § 15.66.140. Prior: 1955 c 191 § 14.]

Reviser's note: This section was amended by 2011 c 60 § 2 and by 2011 c 103 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

Effective date—2003 c 396: See note following RCW 15.66.030.

Effective dates—2002 c 313: See note following RCW 15.65.020.

15.66.150 Annual assessments—Rate—Collection.

There is hereby levied, and there shall be collected by each commission, upon each and every unit of any agricultural commodity specified in any marketing order an annual assessment which shall be paid by the producer thereof upon each and every such unit sold, processed, stored, or delivered for sale, processing, or storage by him or her. Such assessments shall be expressed as a stated amount of money per unit or as a percentage of the net unit price at the time of sale. The total amount of such annual assessment to be paid by all affected producers of such commodity shall not exceed three

percent of the total market value of all affected units sold, processed, stored, or delivered for sale, processing, or storage by all affected producers of such units during the year to which the assessment applies.

Every marketing order shall prescribe the per unit or percentage rate of such assessment. Such rate may be at the full amount of, or at any lesser amount than the amount hereinabove limited and may be altered from time to time by amendment of such order. In every such marketing order and amendment the determination of such rate shall be based upon the volume and price of sales of affected units during a period which the director determines to be a representative period. The per unit or percentage rate of assessment prescribed in any such order or amendment shall for all purposes and times be deemed to be within the limits of assessment above provided until such time as such order is amended as to such rate. However, at the end of any year, any affected producer may obtain a refund from the commission of any assessment payments made which exceed three percent of the total market value of all of the affected commodity sold, processed, stored, or delivered for sale, processing, or storage by such producer during the year. Such refund shall be made only upon satisfactory proof given by such producer in accordance with reasonable rules and regulations prescribed by the director. Such market value shall be based upon the average sales price received by such producer during the year from all his or her bona fide sales or, if such producer did not sell twenty-five percent or more of all of the affected commodity produced by him or her during the year, such market value shall be determined by the director upon other sales of the affected commodity determined by the director to be representative and comparable.

To collect such assessment each order may require:

(1) Stamps to be purchased from the affected commodity commission or other authority stated in such order and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets (said stamps to be canceled immediately upon being attached and the date of cancellation placed thereon).

(2) Payment of producer assessments before the affected units are shipped off the farm or payment of assessments at different or later times, and in such event the order may require any person subject to the assessment to give adequate assurance or security for its payment.

(3) Every affected producer subject to assessment under such order to deposit with the commission in advance an amount based on the estimated number of affected units upon which such person will be subject to such assessment in any one year during which such marketing order is in force, or upon any other basis which the director determines to be reasonable and equitable and specifies in such order, but in no event shall such deposit exceed twenty-five percent of the estimated total annual assessment payable by such person. At the close of such marketing year the sums so deposited shall be adjusted to the total of such assessments payable by such person.

(4) Handlers receiving the affected commodity from the producer, including warehouse operators and processors, to collect producer assessments from producers whose production they handle and remit the same to the affected commission. The lending agency for a commodity credit corporation

loan to producers shall be deemed a handler for the purpose of this subsection. No affected units shall be transported, carried, shipped, sold, stored, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued, but no liability hereunder shall attach to common carriers in the regular course of their business. [2011 c 336 § 415; 1981 c 297 § 40; 1979 ex.s. c 93 § 1; 1961 c 11 § 15.66.150. Prior: 1957 c 133 § 1; 1955 c 191 § 15.]

Additional notes found at www.leg.wa.gov

15.66.245 Marketing agreement or order—Authority for participation in proceedings concerning regulation of pesticides or agricultural chemicals. Any marketing agreement or order may authorize the members of a commodity commission, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.58.030 or any agricultural chemical which is of use or potential use in producing the affected commodity. Any marketing agreement or order may authorize the expenditure of commodity commission funds for this purpose. [2011 c 103 § 9; 2002 c 313 § 63; 1988 c 54 § 2.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Chapter 15.76 RCW AGRICULTURAL FAIRS, YOUTH SHOWS, EXHIBITIONS

Sections

15.76.115 Fair fund—Created—Treasurer's transfer—Purpose.

15.76.115 Fair fund—Created—Treasurer's transfer—Purpose. The fair fund is created in the custody of the state treasury. All moneys received by the department of agriculture for the purposes of this fund and from RCW 67.16.105(7) shall be deposited into the fund. At the beginning of fiscal year 2002 and each fiscal year thereafter, the state treasurer shall transfer into the fair fund from the general fund the sum of two million dollars, except for fiscal year 2011 the state treasurer shall transfer into the fair fund from the general fund the sum of one million one hundred three thousand dollars, and except during fiscal year 2012 and fiscal year 2013 the state treasurer shall transfer into the fair fund from the general fund the sum of one million seven hundred fifty thousand dollars each fiscal year. Expenditures from the fund may be used only for assisting fairs in the manner provided in this chapter. Only the director of agriculture or the director's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2011 1st sp.s. c 50 § 926; 2011 c 103 § 10; 2010 1st sp.s. c 37 § 912; 2001 2nd sp.s. c 16 § 1; 1998 c 345 § 2.]

Effective dates—2011 1st sp.s. c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011], except for section 951 of this act which takes effect June 30, 2011." [2011 1st sp.s. c 50 § 1802.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Additional notes found at www.leg.wa.gov

Chapter 15.80 RCW WEIGHMASTERS

Sections

- 15.80.420 Highway transport of commodities sold by weight—Weighing required—Exceptions.
15.80.640 Writing, etc., false ticket or certificate—Influence—Penalty.

15.80.420 Highway transport of commodities sold by weight—Weighing required—Exceptions. It shall be a violation of this chapter to transport by highway any hay, straw, or grain which has been purchased by weight or will be purchased by weight, unless it is weighed and a certified weight ticket is issued thereon, by the first licensed public weighmaster which would be encountered on the ordinary route to the destination where the hay, straw, or grain is to be unloaded: PROVIDED, HOWEVER, That this section shall not apply to the following:

- (1) The transportation of, or sale of, hay, straw, or grain by the primary producer thereof;
- (2) The transportation of hay, straw, or grain by an agriculturalist for use in his or her own growing, or animal or poultry husbandry endeavors;
- (3) The transportation of grain by a party who is either a warehouse operator or grain dealer and who is licensed under the grain warehouse laws and who makes such shipment in the course of the business for which he or she is so licensed;
- (4) The transportation of hay, straw, or grain by retail merchants, except for the provisions of RCW 15.80.430 and 15.80.440;
- (5) The transportation of grain from a warehouse licensed under the grain warehouse laws when the transported grain is consigned directly to a public terminal warehouse. [2011 c 336 § 416; 1969 ex.s. c 100 § 13.]

15.80.640 Writing, etc., false ticket or certificate—Influence—Penalty. Any person who shall mark, stamp, or write any false weight ticket, scale ticket, or weight certificate, knowing it to be false, and any person who influences, or attempts to wrongfully influence any licensed public weighmaster or weigher in the performance of his or her official duties shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment of not less than thirty days nor more than three hundred sixty-four days in the county jail, or by both such fine and imprisonment. [2011 c 96 § 16; 2010 c 8 § 6113; 1969 ex.s. c 100 § 35.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 15.88 RCW WINE COMMISSION

Sections

- 15.88.025 Regulating wine grapes and wine—Existing comprehensive scheme—Applicable laws.

15.88.025 Regulating wine grapes and wine—Existing comprehensive scheme—Applicable laws. The history, economy, culture, and future of Washington state's agriculture involves the wine industry. In order to develop and promote wine grapes and wine as part of an existing comprehensive scheme to regulate those products the legislature declares:

(1) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its wine grapes and wine be properly promoted by (a) enabling the wine industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing of wine grapes and wines they produce; and (b) working to stabilize the wine industry by increasing markets for wine grapes and wine within the state, the nation, and internationally;

(2) That wine grape growers and wine producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the wine grape growers' and wine producers' ability to compete in local, domestic, and foreign markets;

(3) That it is in the overriding public interest that support for the wine industry be clearly expressed; that adequate protection be given to agricultural commodities, uses, activities, and operations; and that wine grapes and wine be promoted individually, and as part of a comprehensive industry to:

- (a) Enhance the reputation and image of Washington state's agriculture industry;
- (b) Increase the sale and use of wine grapes and wine in local, domestic, and foreign markets;
- (c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of wine grapes and wine;
- (d) Increase the knowledge of the qualities and value of Washington's wine grapes and wine; and
- (e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of wine grapes and wine;

(4) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and

(5) That the production and marketing of wine grapes and wine is a highly regulated industry and that the provisions of this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the wine grape and wine industry include:

- (a) Organic products act under chapter 15.86 RCW;
- (b) Horticultural pests and diseases under chapter 15.08 RCW;
- (c) Horticultural plants, Christmas trees, and facilities—Inspection and licensing under chapter 15.13 RCW;
- (d) Planting stock under chapter 15.14 RCW;
- (e) Washington pesticide control act under chapter 15.58 RCW;
- (f) Insect pests and plant diseases under chapter 17.24 RCW;
- (g) Wholesale distributors and suppliers of wine and malt beverages under chapter 19.126 RCW;

- (h) Weights and measures under chapter 19.94 RCW;
- (i) Title 66 RCW, alcoholic beverage control;
- (j) Title 69 RCW, food, drugs, cosmetics, and poisons including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;
- (k) Chapter 69.07 RCW, Washington food processing act;
- (l) 27 U.S.C., Secs. 201 through 211, 213 through 219a, and 122A;
- (m) 27 C.F.R., Parts 1, 6, 9, 10, 12, 16, 240, 251, 252; and
- (n) Rules under Titles 16 and 314 WAC, and rules adopted under chapter 15.88 RCW. [2011 c 103 § 30; 2002 c 313 § 110.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

Chapter 15.89 RCW

WASHINGTON BEER COMMISSION

Sections

15.89.020	Definitions.
15.89.025	Regulating beer—Existing comprehensive scheme—Applicable laws.
15.89.040	Director's duties—Referendum of beer producers.
15.89.050	Appointment of members—Terms, travel expenses.
15.89.070	Commission powers and duties. (<i>Effective until January 1, 2012.</i>)
15.89.070	Commission powers and duties. (<i>Effective January 1, 2012.</i>)
15.89.100	List of producers of beer—Reporting system.
15.89.110	Annual assessment on beer production—Approval by referendum—Rules.

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

- (1) "Beer" means any malt beverage or malt liquor as the terms are defined in chapter 66.04 RCW.
- (2) "Commission" means the Washington beer commission.
- (3) "Department" means the department of agriculture.
- (4) "Director" means the director of the department or the director's duly authorized representative.
- (5) "Fiscal year" means the twelve-month period beginning with January 1st of any year and ending December 31st.
- (6) "Producer" means any person or other entity licensed under Title 66 RCW to produce beer within Washington.
- (7) "Referendum" means a vote by producers that is conducted by secret ballot. [2011 c 54 § 1; 2006 c 330 § 2.]

15.89.025 Regulating beer—Existing comprehensive scheme—Applicable laws. The history, economy, culture, and future of Washington state's agriculture involve the beer industry. In order to develop and promote beer as part of an existing comprehensive scheme to regulate those products, the legislature declares that:

- (1) It is vital to the continued economic well-being of the citizens of this state and their general welfare that beer produced in Washington state be properly promoted;
- (2) It is in the overriding public interest that support for the Washington beer industry be clearly expressed and that

beer be promoted individually, and as part of a comprehensive industry to:

- (a) Enhance the reputation and image of Washington state's agriculture industry;
 - (b) Protect the public by educating the public in reference to the quality, care, and methods used in the production of beer;
 - (c) Increase the knowledge of the qualities and value of Washington's beer; and
 - (d) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of beer;
- (3) This chapter is enacted in the exercise of the police powers of this state to protect the health, peace, safety, and general welfare of the people of this state; and
- (4) The production and marketing of beer is a highly regulated industry and this chapter and the rules adopted under it are only one aspect of the regulated industry. Other laws applicable to the beer industry include:

- (a) The organic products act, chapter 15.86 RCW;
- (b) The wholesale distributors and suppliers of malt beverages, chapter 19.126 RCW;
- (c) Weights and measures, chapter 19.94 RCW;
- (d) Title 66 RCW, alcoholic beverage control;
- (e) Title 69 RCW, food, drugs, cosmetics, and poisons;
- (f) 21 C.F.R. as it relates to general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;
- (g) Chapter 69.07 RCW, Washington food processing act;
- (h) 27 U.S.C. Secs. 201 through 211, 213 through 219a, and 122A;
- (i) 27 C.F.R. Parts 1, 6, 9, 10, 12, 16, 240, 251, and 252; and
- (j) Rules under Title 314 WAC. [2011 c 103 § 31; 2006 c 330 § 3.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.89.040 Director's duties—Referendum of beer producers. (1) Upon receipt of a petition containing the signatures of five beer producers from a statewide Washington state craft brewing trade association or from other producers to implement this chapter and to determine producer participation in the commission and assessment under this chapter, the director shall:

- (a) Conduct a referendum of beer producers. The requirements of assent or approval of the referendum are met if:
 - (i) At least fifty-one percent by numbers of producers participating in the referendum vote affirmatively; and
 - (ii) Thirty percent of the producers and thirty percent of the production have been represented in the referendum to determine assent or approval of participation and assessment. The referendum shall be conducted within sixty days of receipt of the petition; and
- (b) Establish a list of beer producers from information provided by the petitioners, by obtaining information on beer producers from applicable producer organizations or associations or other sources identified as maintaining the information. In establishing a current list of beer producers and their

individual production, the director shall use the beer producer's name, mailing address, and production by the producer in the preceding fiscal year. Information on each producer shall be mailed to each beer producer on record with the director for verification. All corrections shall be filed with the director within twenty days from the date of mailing. The list of producers shall be kept in a file by the director. The list shall be certified as a true representation of the referendum mailing list. Inadvertent failure to notify a producer does not invalidate a proceeding conducted under this chapter. The director shall provide the commission the list of producers after assent in a referendum as provided in this section.

(2) If the director determines that the requisite assent has been given in the referendum conducted under subsection (1) of this section, the director shall:

(a) Within sixty days after assent of the referendum held, appoint the members of the commission; and

(b) Direct the commission to put into force the assessment as provided for in RCW 15.89.110.

(3) If the director determines that the requisite assent has not been given in the referendum conducted under subsection (1) of this section, the director shall take no further action to implement or enforce this chapter.

(4) Upon completion of the referendum conducted under subsection (1) of this section, the department shall tally the results of the vote and provide the results to producers. If a producer disputes the results of a vote, that producer within sixty days from the announced results, shall provide in writing a statement of why the vote is disputed and request a recount. Once the vote is tallied and distributed, all disputes are resolved, and all matters in a vote are finalized, the individual ballots may be destroyed.

(5) Before conducting the referendum provided for in subsection (1) of this section, the director may require the petitioners to deposit with him or her an amount of money as the director deems necessary to defray the expenses of conducting the referendum. The director shall provide the petitioners an estimate of expenses that may be incurred to conduct a referendum before any service takes place. Petitioners shall deposit funds with the director to pay for expenses incurred by the department. The commission shall reimburse petitioners the amount paid to the department when funds become available. However, if for any reason the referendum process is discontinued, the petitioners shall reimburse the department for expenses incurred by the department up until the time the process is discontinued.

(6) The director is not required to hold a referendum under subsection (1) of this section more than once in any twelve-month period. [2011 c 54 § 2; 2006 c 330 § 5.]

15.89.050 Appointment of members—Terms, travel expenses. (1) The director shall appoint the producer members of the commission. In making appointments, no later than ninety days before an expiration of a commission member's term, the director shall call for recommendations for commission member positions, and the director shall take into consideration recommendations made by a statewide Washington state craft brewing trade association or other producers. In appointing persons to the commission, the director shall seek a balanced representation on the commis-

sion that reflects the composition of the beer producers throughout the state on the basis of beer produced and geographic location. Information on beer production by geographic location shall be provided by the commission upon the director's request.

(2) If a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the commission shall notify the director and the unexpired term shall immediately be filled by appointment by the director.

(3) Each member or employee of the commission shall be reimbursed for actual travel expenses incurred in carrying out this chapter as defined by the commission in rule. Otherwise if not defined in rule, reimbursement for travel expenses shall be at the rates allowed by RCW 43.03.050 and 43.03.060. [2011 c 54 § 3; 2006 c 330 § 6.]

15.89.070 Commission powers and duties. (Effective until January 1, 2012.) The commission shall:

(1) Elect a chair and officers. The officers must include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission must adopt rules for its own governance that provide for the holding of an annual meeting for the election of officers and the transaction of other business and for other meetings the commission may direct;

(2) Do all things reasonably necessary to effect the purposes of this chapter. However, the commission has no rule-making power except as provided in this chapter;

(3) Employ and discharge managers, secretaries, agents, attorneys, and employees and engage the services of independent contractors;

(4) Retain, as necessary, the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(5) Receive donations of beer from producers for promotional purposes under subsections (6) and (7) of this section and for fund-raising purposes under subsection (8) of this section. Donations of beer for promotional purposes may only be disseminated without charge;

(6) Engage directly or indirectly in the promotion of Washington beer, including, without limitation, the acquisition in any lawful manner and the dissemination without charge of beer. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer. This dissemination without charge shall be for agricultural development or trade promotion, and not for fund-raising purposes under subsection (8) of this section. Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, sale of beer, or of research related to such marketing, advertising, or sale;

(7) Promote Washington beer by conducting unique beer tastings without charge;

(8) Beginning July 1, 2007, fund the Washington beer commission through sponsorship of up to twelve beer festivals annually at which beer may be sold to festival partici-

pants. For this purpose, the commission would qualify for issue of a special occasion license as an exception to WAC 314-05-020 but must comply with laws under Title 66 RCW and rules adopted by the liquor control board under which such events may be conducted;

(9) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, regulation, distribution, sale, or use of beer including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(10) Acquire and transfer personal and real property, establish offices, incur expenses, and enter into contracts, including contracts for the creation and printing of promotional literature. The contracts are not subject to chapter 43.78 RCW, and are cancelable by the commission unless performed under conditions of employment that substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create debt and other liabilities that are reasonable for proper discharge of its duties under this chapter;

(11) Maintain accounts with one or more qualified public depositories as the commission may direct, for the deposit of money, and expend money for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(12) Cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(13) Create and maintain a list of producers and disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(14) Employ, designate as an agent, act in concert with, and enter into contracts with any person, council, commission, or other entity to promote the general welfare of the beer industry and particularly to assist in the sale and distribution of Washington beer in domestic and foreign commerce. The commission shall expend money necessary or advisable for this purpose and to pay its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington beer in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds;

(15) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(16) Serve as liaison with the liquor control board on behalf of the commission and not for any individual producer;

(17) Receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [2011 c 103 § 16; 2009 c 373 § 9; 2007 c 211 § 1; 2006 c 330 § 8.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.89.070 Commission powers and duties. (Effective January 1, 2012.) The commission shall:

(1) Elect a chair and officers. The officers must include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission must adopt rules for its own governance that provide for the holding of an annual meeting for the election of officers and the transaction of other business and for other meetings the commission may direct;

(2) Do all things reasonably necessary to effect the purposes of this chapter. However, the commission has no rule-making power except as provided in this chapter;

(3) Employ and discharge managers, secretaries, agents, attorneys, and employees and engage the services of independent contractors;

(4) Retain, as necessary, the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(5) Receive donations of beer from producers for promotional purposes under subsections (6) and (7) of this section and for fund-raising purposes under subsection (8) of this section. Donations of beer for promotional purposes may only be disseminated without charge;

(6) Engage directly or indirectly in the promotion of Washington beer, including, without limitation, the acquisition in any lawful manner and the dissemination without charge of beer. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer. This dissemination without charge shall be for agricultural development or trade promotion, and not for fund-raising purposes under subsection (8) of this section. Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, sale of beer, or of research related to such marketing, advertising, or sale;

(7) Promote Washington beer by conducting unique beer tastings without charge;

(8) Beginning July 1, 2007, fund the Washington beer commission through sponsorship of up to twelve beer festivals annually at which beer may be sold to festival participants. For this purpose, the commission would qualify for issue of a special occasion license as an exception to WAC 314-05-020 but must comply with laws under Title 66 RCW and rules adopted by the liquor control board under which such events may be conducted;

(9) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, regulation, distribution, sale, or use of beer including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(10) Acquire and transfer personal and real property, establish offices, incur expenses, and enter into contracts, including contracts for the creation and printing of promotional literature. The contracts are not subject to chapter 43.78 RCW, and are cancelable by the commission unless performed under conditions of employment that substantially

conform to the laws of this state and the rules of the department of labor and industries. The commission may create debt and other liabilities that are reasonable for proper discharge of its duties under this chapter;

(11) Maintain accounts with one or more qualified public depositories as the commission may direct, for the deposit of money, and expend money for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(12) Cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(13) Create and maintain a list of producers and disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(14) Employ, designate as an agent, act in concert with, and enter into contracts with any person, council, commission, or other entity to promote the general welfare of the beer industry and particularly to assist in the sale and distribution of Washington beer in domestic and foreign commerce. The commission shall expend money necessary or advisable for this purpose and to pay its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington beer in domestic or foreign commerce, employing and paying for vendors of professional services of all kinds;

(15) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(16) Serve as liaison with the liquor control board on behalf of the commission and not for any individual producer;

(17) Receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [2011 c 103 § 16; 2011 c 60 § 3; 2009 c 373 § 9; 2007 c 211 § 1; 2006 c 330 § 8.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

15.89.100 List of producers of beer—Reporting system. (1) The commission shall prepare a list of all producers from information available from the liquor control board, the department, or the producers' association. This list must contain the names and addresses of producers within this state and the amount, by barrelage, of beer produced during the period designated by the commission. A qualified person may, at any time, have his or her name placed upon the list by delivering or mailing the information to the commission. This list shall be corrected and brought up-to-date in accordance with evidence and information available to the commission by December 31st of each year. For the purposes of giving notice and holding referendums, the list updated before the date for issuing notices or ballots is the list of all producers entitled to notice, to assent or dissent, or to vote.

Inadvertent failure to notify a producer does not invalidate a proceeding conducted under this chapter.

(2) It is the responsibility of producers to ensure that their correct address is filed with the commission. It is also the responsibility of producers to submit production data to the commission as prescribed by this chapter.

(3) The commission shall develop a reporting system to document that the producers in this state are reporting quantities of beer produced and are paying the assessment as provided in RCW 15.89.110. [2011 c 54 § 4; 2006 c 330 § 13.]

15.89.110 Annual assessment on beer production—Approval by referendum—Rules. (1) Pursuant to referendum in accordance with RCW 15.89.040, there is levied, and the commission shall collect, upon beer produced by a producer, an annual assessment of ten cents per barrel of beer produced, up to ten thousand barrels per location.

(2) The commission shall adopt rules prescribing the time, place, and method for payment and collection of this assessment and provide for the collection of assessments from producers who ship directly out-of-state.

(3) The commission may reduce the assessment per producer based upon in-kind contributions to the commission. [2011 c 54 § 5; 2006 c 330 § 14.]

Chapter 15.92 RCW

CENTER FOR SUSTAINING AGRICULTURE AND NATURAL RESOURCES

Sections

15.92.010	Definitions.
15.92.090	Commission on pesticide registration—Established—Composition—Duration of membership—Compensation.

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

(1) "Agricultural commodity" means any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including but not limited to, products qualifying as organic products under chapter 15.86 RCW, private sector cultured aquatic products as defined in RCW 15.85.020, bees and honey, and Christmas trees but not including timber or timber products.

(2) "Center" means the center for sustaining agriculture and natural resources established at Washington State University.

(3) "Integrated pest management" is a strategy that uses various combinations of pest control methods, biological, cultural, and chemical, in a compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

(4) "IR-4 program" means interregional research project number four, clearances of chemicals and biologics for minor or special uses, established in 1963 by the cooperative state research service of the United States department of agriculture, the coordinated national program involving land-grant universities and the United States department of agriculture to provide data required for the registration of pesticides needed for the production of minor crops.

(5) "Laboratory" means the food and environmental quality laboratory established at Washington State University at Tri-Cities.

(6) "Minor crop" means an agricultural crop considered to be minor in the national context of registering pesticides.

(7) "Minor use" means a pesticide use considered to be minor in the national context of registering pesticides including, but not limited to, a use for a special local need.

(8) "Natural resources" means soil, water, air, forests, wetlands, wildlands, and wildlife.

(9) "Pesticide" means chemical or biologic used to control pests such as insect, rodent, nematode, snail, slug, weed, virus, or any organism the director of agriculture may declare to be a pest.

(10) "Registration" means use of a pesticide approved by the state department of agriculture.

(11) "Sustainable agriculture" means a systems approach to farming, ranching, and natural resource production that builds on and supports the physical, biological, and ecological resource base upon which agriculture depends. The goals of sustainable agriculture are to provide human food and fiber needs in an economically viable manner for the agriculture industry and in a manner which protects the environment and contributes to the overall safety and quality of life. [2011 c 103 § 32; 1995 c 390 § 4; 1991 c 341 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—2011 c 103: See note following RCW 15.26.120.

15.92.090 Commission on pesticide registration—Established—Composition—Duration of membership—Compensation. (1) A commission on pesticide registration is established. The commission shall be composed of twelve voting members appointed by the director as follows:

(a) Eight members from the following segments of the state's agricultural industry as nominated by a statewide private agricultural association or agricultural commodity commission formed under Title 15 RCW: (i) The tree fruit industry; (ii) hop growers; (iii) potato growers; (iv) wheat growers; (v) vegetable and seed growers; (vi) berry growers; (vii) wine grape growers; and (viii) the nursery and landscape industry. Although members are appointed from various segments of the agriculture industry, they are appointed to represent and advance the interests of the industry as a whole.

(b) One member from each of the following: (i) Forest protection industry; (ii) food processors; (iii) agricultural chemical industry; and (iv) professional pesticide applicators. One member shall be appointed for each such segment of the industry and shall be nominated by a statewide, private association of that segment of the industry. The representative of the agricultural chemical industry shall be involved in the manufacture of agricultural crop protection products.

The following shall be ex officio, nonvoting members of the commission: The coordinator of the interregional project number four at Washington State University; the director of the department of ecology or the director's designee; the director of the department of agriculture or the director's designee; the director of the department of labor and industries or the director's designee; and the secretary of the department of health or the secretary's designee.

(2) Each voting member of the commission shall serve a term of three years. A vacancy shall be filled by appointment for the unexpired term in the same manner provided for an appointment to the full term. No member of the commission may be removed by the director during his or her term of office unless for cause of incapacity, incompetence, neglect of duty, or malfeasance in office. Each member of the commission shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 for attending meetings of the commission and for performing special duties, in the way of official commission business, specifically assigned to the person by the commission. The voting members of the commission serve without compensation from the state other than such travel expenses.

(3) The commission shall elect a chair from among its voting members each calendar year. After its original organizational meeting, the commission shall meet at the call of the chair. A majority of the voting members of the commission constitutes a quorum and an official action of the commission may be taken by a majority vote of the quorum. [2011 1st sp.s. c 21 § 24; 1999 c 247 § 1; 1995 c 390 § 1.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Chapter 15.115 RCW

WASHINGTON GRAIN COMMISSION

Sections

- 15.115.020 Regulations and restraints applicable to the wheat and barley industries.
 15.115.140 Powers and duties. (*Effective until January 1, 2012.*)
 15.115.140 Powers and duties. (*Effective January 1, 2012.*)
 15.115.270 Collection of assessment—Failure to pay assessment—Civil action—Venue.

15.115.020 Regulations and restraints applicable to the wheat and barley industries. The wheat and barley industries are highly regulated industries, and this chapter and the rules adopted under it are only one aspect of the regulation of those industries. Other regulations and restraints applicable to the wheat and barley industries include:

- (1) Chapter 15.04 RCW, Washington agriculture general provisions;
 (2) Chapter 15.08 RCW, horticultural pests and diseases;
 (3) Chapter 15.14 RCW, planting stock;
 (4) Chapter 15.49 RCW, seeds;
 (5) Chapter 15.54 RCW, fertilizers, minerals, and limes;
 (6) Chapter 15.58 RCW, Washington pesticide control act;
 (7) Chapter 15.64 RCW, farm marketing;
 (8) Chapter 15.83 RCW, agricultural marketing and fair practices;
 (9) Chapter 15.86 RCW, organic products;
 (10) Chapter 15.92 RCW, center for sustaining agriculture and natural resources;
 (11) Chapter 17.24 RCW, insect pests and plant diseases;
 (12) Chapter 19.94 RCW, weights and measures;
 (13) Chapter 20.01 RCW, agricultural products—commission merchants, dealers, brokers, buyers, agents;
 (14) Chapter 22.09 RCW, agricultural commodities;
 (15) Chapter 43.23 RCW, department of agriculture;

(16) Chapter 69.04 RCW, food, drugs, cosmetics, and poisons including provisions of Title 21 U.S.C. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(17) Chapter 70.94 RCW, Washington clean air act, agricultural burning;

(18) 7 U.S.C., Sec. 136, federal insecticide, fungicide, and rodenticide act; and

(19) 7 U.S.C., Sec. 1621, agricultural marketing act. [2011 c 103 § 33; 2009 c 33 § 2.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.115.140 Powers and duties. (*Effective until January 1, 2012.*) (1) The commission is an agency of the Washington state government subject to oversight by the director. In exercising its powers and duties, the commission shall carry out the following purposes:

(a) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets, or to create new or larger markets for wheat and barley grown in Washington;

(b) To engage in cooperative efforts in the domestic or foreign marketing of wheat and barley grown in Washington;

(c) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of wheat and barley grown in Washington;

(d) To adopt rules to provide for improving standards and grades by defining, establishing, and providing labeling requirements with respect to wheat and barley grown in Washington;

(e) To investigate and take necessary action to prevent unfair trade practices relating to wheat and barley grown in Washington;

(f) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of wheat and barley grown in Washington to any elected official or officer or employee of any agency;

(g) To provide marketing information and services for producers of wheat and barley in Washington;

(h) To provide information and services for meeting resource conservation objectives of producers of wheat and barley in Washington;

(i) To provide for education and training related to wheat and barley grown in Washington; and

(j) To assist and cooperate with the department or any local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect the production or trade of wheat and barley grown in Washington.

(2) The commission has the following powers and duties:

(a) To collect the assessments of producers as provided in this chapter and to expend the same in accordance with this chapter;

(b) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments authorized under this chapter and

data on the value of each producer's production for a minimum three-year period;

(c) To maintain a list of the names and addresses of persons who handle wheat or barley within the affected area and data on the amount and value of the wheat and barley handled for a minimum three-year period by each person;

(d) To request records and audit the records of producers or handlers of wheat or barley during normal business hours to determine whether the appropriate assessment has been paid;

(e) To fund, conduct, or otherwise participate in scientific research relating to wheat or barley, including but not limited to research to find more efficient methods of irrigation, production, processing, handling, transportation, and marketing of wheat or barley, or regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship related to wheat or barley;

(f) To work cooperatively with local, state, and federal agencies, universities, and national organizations for the purposes provided in this chapter;

(g) To establish a foundation using commission funds as grant money when the foundation benefits the wheat or barley industry in Washington and implements the purposes provided in this chapter;

(h) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to wheat or barley;

(i) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes and powers provided in this chapter, including specifically contracts or agreements for research described in (e) of this subsection. Personal service contracts must comply with chapter 39.29 RCW;

(j) To institute and maintain in its own name any and all legal actions necessary to carry out the provisions of this chapter, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities;

(k) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review and approval by the office of the attorney general;

(l) To elect a chair and other officers as determined advisable;

(m) To employ and discharge at its discretion administrators and additional personnel, advertising and research agencies, and other persons and firms as appropriate and pay compensation;

(n) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey that real property;

(o) To keep accurate records of all its receipts and disbursements by commodity, which records must be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

(r) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(s) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in this chapter;

(t) To apply for and administer federal market access programs or similar programs or projects and provide matching funds as may be necessary;

(u) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized in this chapter;

(v) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of wheat or barley; or the regulation of the manufacture, distribution, sale, or use of any pesticide, as defined in chapter 15.58 RCW, or any agricultural chemical which is of use or potential use in producing wheat or barley. This participation may include activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(w) To speak on behalf of the Washington state government on a nonexclusive basis regarding issues related to wheat and barley, including but not limited to trade negotiations and market access negotiations and to fund industry organizations engaging in those activities;

(x) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this chapter;

(y) To administer, enforce, direct, and control the provisions of this chapter and any rules adopted under this chapter; and

(z) Other powers and duties that are necessary to carry out the purposes of this chapter. [2011 c 103 § 17; 2009 c 33 § 14.]

Purpose—2011 c 103: See note following RCW 15.26.120.

15.115.140 Powers and duties. (Effective January 1, 2012.) (1) The commission is an agency of the Washington state government subject to oversight by the director. In exercising its powers and duties, the commission shall carry out the following purposes:

(a) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets, or to create new or larger markets for wheat and barley grown in Washington;

(b) To engage in cooperative efforts in the domestic or foreign marketing of wheat and barley grown in Washington;

(c) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of wheat and barley grown in Washington;

(d) To adopt rules to provide for improving standards and grades by defining, establishing, and providing labeling requirements with respect to wheat and barley grown in Washington;

(e) To investigate and take necessary action to prevent unfair trade practices relating to wheat and barley grown in Washington;

(f) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of wheat and barley grown in Washington to any elected official or officer or employee of any agency;

(g) To provide marketing information and services for producers of wheat and barley in Washington;

(h) To provide information and services for meeting resource conservation objectives of producers of wheat and barley in Washington;

(i) To provide for education and training related to wheat and barley grown in Washington; and

(j) To assist and cooperate with the department or any local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect the production or trade of wheat and barley grown in Washington.

(2) The commission has the following powers and duties:

(a) To collect the assessments of producers as provided in this chapter and to expend the same in accordance with this chapter;

(b) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments authorized under this chapter and data on the value of each producer's production for a minimum three-year period;

(c) To maintain a list of the names and addresses of persons who handle wheat or barley within the affected area and data on the amount and value of the wheat and barley handled for a minimum three-year period by each person;

(d) To request records and audit the records of producers or handlers of wheat or barley during normal business hours to determine whether the appropriate assessment has been paid;

(e) To fund, conduct, or otherwise participate in scientific research relating to wheat or barley, including but not limited to research to find more efficient methods of irrigation, production, processing, handling, transportation, and marketing of wheat or barley, or regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship related to wheat or barley;

(f) To work cooperatively with local, state, and federal agencies, universities, and national organizations for the purposes provided in this chapter;

(g) To establish a foundation using commission funds as grant money when the foundation benefits the wheat or barley industry in Washington and implements the purposes provided in this chapter;

(h) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to wheat or barley;

(i) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes and powers provided in this chapter, including specifically contracts or agreements for research described in (e) of this subsection. Personal service contracts must comply with chapter 39.29 RCW;

(j) To institute and maintain in its own name any and all legal actions necessary to carry out the provisions of this chapter, including actions by injunction, mandatory injunc-

tion or civil recovery, or proceedings before administrative tribunals or other governmental authorities;

(k) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review and approval by the office of the attorney general;

(l) To elect a chair and other officers as determined advisable;

(m) To employ and discharge at its discretion administrators and additional personnel, advertising and research agencies, and other persons and firms as appropriate and pay compensation;

(n) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey that real property;

(o) To keep accurate records of all its receipts and disbursements by commodity, which records must be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

(r) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(s) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in this chapter;

(t) To apply for and administer federal market access programs or similar programs or projects and provide matching funds as may be necessary;

(u) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized in this chapter;

(v) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of wheat or barley; or the regulation of the manufacture, distribution, sale, or use of any pesticide, as defined in chapter 15.58 RCW, or any agricultural chemical which is of use or potential use in producing wheat or barley. This participation may include activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(w) To speak on behalf of the Washington state government on a nonexclusive basis regarding issues related to wheat and barley, including but not limited to trade negotiations and market access negotiations and to fund industry organizations engaging in those activities;

(x) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this chapter;

(y) To administer, enforce, direct, and control the provisions of this chapter and any rules adopted under this chapter; and

(z) Other powers and duties that are necessary to carry out the purposes of this chapter. [2011 c 103 § 17; 2011 c 60 § 4; 2009 c 33 § 14.]

Reviser's note: This section was amended by 2011 c 60 § 4 and by 2011 c 103 § 17, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective date—2011 c 60: See RCW 42.17A.919.

15.115.270 Collection of assessment—Failure to pay assessment—Civil action—Venue. (1) The collection of the assessment made and levied by the commission must be paid by the producer upon all commercial quantities of wheat and all commercial quantities of barley sold, processed, stored, or delivered for sale, processing, or storage by the producer. However, an assessment may not be levied or collected on wheat or barley grown and used by the producer for feed, seed, or personal consumption.

(2) Handlers including warehouse operators, processors, and feedlots receiving wheat or barley in commercial quantities from producers shall collect the assessment made and levied by the commission from each producer whose production they handle and remit the assessment to the commission on a monthly basis. Affected units of wheat or barley must not be transported, carried, shipped, sold, stored, or otherwise handled or disposed of until every due and payable assessment under this chapter has been paid and the receipt issued, but liability under this chapter does not attach to common carriers in the regular course of their business.

(3) Any due and payable assessment levied under this chapter constitutes a personal debt of every person so assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission on a monthly basis. In the event any person fails to pay the full amount of such an assessment, the commission may add to the unpaid assessment an amount not exceeding ten percent of the unpaid assessment to defray the cost of enforcing the collecting of the unpaid assessment. In the event of failure of the person or persons to pay any due and payable assessment, the commission may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the additional ten percent, and the action must be tried and judgment rendered as in any other cause of action for debt due and payable. Venue for an action against a person owing a due and payable assessment to the commission is in Spokane county or a county in which the person produces or handles wheat or barley. [2011 c 336 § 417; 2009 c 33 § 28.]

Title 16

ANIMALS AND LIVESTOCK

Chapters

16.04 Trespass of animals—General.

16.24 Stock restricted areas.

16.36 Animal health.

16.50 Humane slaughter of livestock.

16.52 Prevention of cruelty to animals.

16.54 Abandoned animals.

16.57 Identification of livestock.

16.58 Identification of cattle through licensing of certified feed lots.

16.60 Fences.

- 16.65 Public livestock markets.
- 16.67 Washington state beef commission.
- 16.68 Disposal of dead animals.
- 16.70 Control of pet animals infected with diseases communicable to humans.

Chapter 16.04 RCW

TRESPASS OF ANIMALS—GENERAL

Sections

- 16.04.020 Notice of restraint—Owner known.

16.04.020 Notice of restraint—Owner known. Whenever any animals are restrained as provided in RCW 16.04.010, the person restraining such animals shall within twenty-four hours thereafter notify in writing the owner, or person in whose custody the same was at the time the trespass was committed, of the seizure of such animals, and the probable amount of the damages sustained: PROVIDED, He or she knows to whom such animals belong. [2011 c 336 § 418; 1893 c 31 § 2; RRS § 3091. FORMER PART OF SECTION: 1925 ex.s. c 56 § 2; 1893 c 31 § 3; RRS § 3092, now codified as RCW 16.04.025.]

Chapter 16.24 RCW

STOCK RESTRICTED AREAS

Sections

- 16.24.120 Impounding—Procedure (*as amended by 2011 c 103*).
- 16.24.120 Impounding—Procedure (*as amended by 2011 c 336*).
- 16.24.180 Castration or gelding of stock at large.

16.24.120 Impounding—Procedure (*as amended by 2011 c 103*). Upon taking possession of any livestock at large contrary to the provisions of ~~chapter 16.24 RCW ((16.13.020))~~, or any unclaimed livestock submitted or impounded, by any person, at any public livestock market or any other facility approved by the director, the sheriff or brand inspector shall cause it to be transported to and impounded at the nearest public livestock market licensed under chapter 16.65 RCW or at such place as approved by the director. If the sheriff has impounded an animal in accordance with this section, he or she shall forthwith notify the nearest brand inspector of the department of agriculture, who shall examine the animal and, by brand, tattoo, or other identifying characteristic, shall attempt to ascertain the ownership thereof. [2011 c 103 § 11; 1989 c 286 § 12; 1979 c 154 § 7; 1975 1st ex.s. c 7 § 15; 1951 c 31 § 3. Formerly RCW 16.13.030.]

Purpose—2011 c 103: See note following RCW 15.26.120.

16.24.120 Impounding—Procedure (*as amended by 2011 c 336*). Upon taking possession of any livestock at large contrary to the provisions of RCW ((16.13.020)) 16.24.110, or any unclaimed livestock submitted or impounded, by any person, at any public livestock market or any other facility approved by the director, the sheriff or brand inspector shall cause it to be transported to and impounded at the nearest public livestock market licensed under chapter 16.65 RCW or at such place as approved by the director. If the sheriff has impounded an animal in accordance with this section, he or she shall forthwith notify the nearest brand inspector of the department of agriculture, who shall examine the animal and, by brand, tattoo, or other identifying characteristic, shall attempt to ascertain the ownership thereof. [2011 c 336 § 419; 1989 c 286 § 12; 1979 c 154 § 7; 1975 1st ex.s. c 7 § 15; 1951 c 31 § 3. Formerly RCW 16.13.030.]

Reviser's note: RCW 16.24.120 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Additional notes found at www.leg.wa.gov

16.24.180 Castration or gelding of stock at large. It shall be lawful for any person having cows or heifers running at large in this state to take up or capture and castrate, at the risk of the owner, at any time between the first day of March and the fifteenth day of May, any bull above the age of ten months found running at large out of the enclosed grounds of the owner or keeper. It shall be lawful for any person to take up or capture and geld, at the risk of the owner, between April 1st and September 30th of any year, any stud horse or jackass or any male mule above the age of eighteen months found running at large out of the enclosed grounds of the owner or keeper. If the said animal shall die, as a result of such castration, the owner shall have no recourse against the person who shall have taken up or captured and castrated, or caused to be castrated, the said animal: PROVIDED, Such act of castration shall have been skillfully done by a person accustomed to doing the same: AND PROVIDED FURTHER, That if the person so taking up or capturing such animal, or causing it to be so taken up or captured, shall know the owner or keeper of such animal, and shall know that said animal is being kept for breeding purposes, it shall be his or her duty forthwith to notify such owner or keeper of the taking up of said animal, and if such owner or keeper shall not within two days after being so notified pay for the reasonable costs of keeping of said animal, and take and safely keep said animal thereafter within his or her own enclosures, then it shall be lawful for the taker-up of said animal to castrate the same, and the owner thereof shall pay a reasonable sum for such act of castration, if done skillfully, as hereinbefore required, and shall also pay for the keeping of said animal as above provided, and the amount for which he or she may be liable therefor may be recovered in an action at law in any court having jurisdiction thereof: AND PROVIDED FURTHER, That if said animal should be found running at large a third time within the same year, and within the prohibited dates hereinbefore mentioned, it shall be lawful for any person to capture and castrate the animal without giving any notice to the owner or keeper whatever. For purposes of this section, geld and castrate shall have the same meaning. [2011 c 336 § 420; 1989 c 286 § 15; 1965 c 66 § 4; 1890 p 453 § 1; RRS § 3081. Formerly RCW 16.20.010.]

Additional notes found at www.leg.wa.gov

Chapter 16.36 RCW

ANIMAL HEALTH

Sections

- 16.36.005 Definitions.
- 16.36.025 Recovery of costs.
- 16.36.040 Rules—Prevention—Inspections and tests—Reportable disease—Federal regulations.
- 16.36.050 Unlawful actions—Importation—Required certificates—Intentional or willful misconduct.
- 16.36.060 Tests, examinations, inspections, samples, examine and copy records—Entry onto property—Unlawful conduct—Seizure of property—Search warrant.
- 16.36.113 Violations of chapter or rules—Civil penalty—Moneys collected—Time and mileage fee.
- 16.36.140 Bringing an animal into the state—Securing a certificate of veterinary inspection required—Exemptions—Director's authority—Rules.
- 16.36.150 Animal disease traceability activities for cattle—Fee—Penalty.
- 16.36.160 Activity report and financial statement—Animal disease traceability activities.

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

(1) "Animal" means all members of the animal kingdom except humans, fish, and insects. However, "animal" does not mean noncaptive wildlife as defined in RCW 77.08.010, except as used in RCW 16.36.050(1) and 16.36.080 (1), (2), (3), and (5).

(2) "Animal reproductive product" means sperm, ova, fertilized ova, and embryos from animals.

(3) "Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official electronic or paper form from the state of origin or from the animal and plant health inspection service (APHIS) of the United States department of agriculture, executed by a licensed and accredited veterinarian or a veterinarian approved by the animal and plant health inspection service. "Certificate of veterinary inspection" is also known as an "official health certificate."

(4) "Communicable disease" means a disease due to a specific infectious agent or its toxic products transmitted from an infected person, animal, or inanimate reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the environment.

(5) "Contagious disease" means a communicable disease that is capable of being easily transmitted from one animal to another animal or a human.

(6) "Department" means the department of agriculture of the state of Washington.

(7) "Deputized state veterinarian" means a Washington state licensed and accredited veterinarian appointed and compensated by the director according to state law and department policies.

(8) "Director" means the director of the department or his or her authorized representative.

(9) "Farm-raised fish" means fish raised by aquaculture as defined in RCW 15.85.020. Farm-raised fish are considered to be a part of animal agriculture; however, disease inspection, prevention, and control programs and related activities for farm-raised fish are administered by the department of fish and wildlife under chapter 77.115 RCW.

(10) "Garbage" means the solid animal and vegetable waste and offal together with the natural moisture content resulting from the handling, preparation, or consumption of foods in houses, restaurants, hotels, kitchens, markets, meat shops, packing houses and similar establishments or any other food waste containing meat or meat products.

(11) "Herd or flock plan" means a written management agreement between the owner of a herd or flock and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner and the area veterinarian-in-charge of the United States department of agriculture, animal and plant health inspection service, veterinary services in which each participant agrees to undertake actions specified in the herd or flock plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd or flock and to work toward eradicating the disease in the infected herd or flock.

(12) "Hold order" means an order by the director to the owner or agent of the owner of animals or animal reproductive products which restricts the animals or products to a des-

ignated holding location pending an investigation by the director of the disease, disease exposure, well-being, movement, or import status of the animals or animal reproductive products.

(13) "Infectious agent" means an organism including viruses, rickettsia, bacteria, fungi, protozoa, helminthes, or prions that is capable of producing infection or infectious disease.

(14) "Infectious disease" means a clinical disease of humans or animals resulting from an infection with an infectious agent that may or may not be communicable or contagious.

(15) "Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. "Livestock" does not mean free ranging wildlife as defined in Title 77 RCW.

(16) "Meat processors" means a person licensed to operate a slaughtering establishment under chapter 16.49 RCW or the federal meat inspection act (21 U.S.C. Sec. 601 et seq.).

(17) "Person" means a person, persons, firm, or corporation.

(18) "Quarantine" means the placing and restraining of any animal or its reproductive products by the owner or agent of the owner within a certain described and designated enclosure or area within this state, or the restraining of any animal or its reproductive products from entering this state, as may be directed in an order by the director.

(19) "Reportable disease" means a disease designated by rule by the director as reportable to the department by veterinarians and others made responsible to report by statute.

(20) "Sold" means sale, trade, gift, barter, or any other action that constitutes a change of ownership.

(21) "Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals. [2011 c 204 § 6. Prior: 2010 c 66 § 1; 2003 c 39 § 9; 1998 c 8 § 1; 1987 c 163 § 1; 1953 c 17 § 1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

16.36.025 Recovery of costs. The director may collect moneys to recover the reasonable costs of purchasing, printing, and distributing official individual identification devices or methods, regulatory forms, and other supplies. All funds received under this section must be deposited in the animal disease traceability account in the agricultural local fund created in RCW 43.23.230 to cover the costs associated with this chapter. [2011 c 204 § 1; 1998 c 8 § 19.]

16.36.040 Rules—Prevention—Inspections and tests—Reportable disease—Federal regulations. (1) The director may adopt and enforce rules necessary to carry out the purpose and provisions of this chapter, and including:

(a) Preventing the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting animals in this state;

(b) Governing the inspection and testing of all animals within or about to be imported into this state;

(c) Designating any disease as a reportable disease; and

(d) Designating when a certificate of veterinary inspection, import health papers, permits, or other transportation documents required by law or rule must designate a destination with a physical address for animals entering Washington and when those animals must be delivered or transported directly to the physical address of that destination.

(2) Rules to prevent the introduction or spread of infectious, contagious, communicable, or dangerous diseases affecting animals in this state may differ from federal regulations by being more restrictive. [2011 c 204 § 8; 1998 c 8 § 4; 1979 c 154 § 10; 1947 c 172 § 3; 1927 c 165 § 4; Rem. Supp. 1947 § 3113. Prior: 1915 c 100 § 4; 1901 c 112 § 2; 1895 c 167 § 2.]

Additional notes found at www.leg.wa.gov

16.36.050 Unlawful actions—Importation—Required certificates—Intentional or willful misconduct.

(1) It is unlawful for a person to bring an animal into Washington state without first securing a certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin, verifying that the animal meets the Washington state animal health requirements. This subsection does not apply to:

(a) Those animals that qualify for an exemption in RCW 16.36.140; or

(b) Other animals exempted by the director by rule.

(2) For animals imported into Washington it is unlawful for a person to transport or deliver an animal to any physical address other than the physical address of the destination designated by a certificate of veterinary inspection, import health papers, permits, or other transportation documents required by law or rule. The director may exempt animals from this requirement by rule.

(3) It is unlawful for a person to intentionally falsely make, complete, alter, use, or sign a certificate of veterinary inspection or official animal health document of the department.

(4) It is unlawful for a person to intentionally falsely apply, alter, or remove an official animal health or official animal identification tag, permanent mark, or other device.

(5) It is unlawful for a person to willfully hinder, obstruct, or resist the director, or any peace officer or deputized state veterinarian acting under him or her, when engaged in the performance of their duties.

(6) It is unlawful for a person to willfully fail to comply with or to violate any rule or order adopted by the director under this chapter. [2011 c 204 § 9; 2010 c 66 § 2; 2007 c 71 § 2; 1998 c 8 § 5; 1979 c 154 § 11; 1947 c 172 § 4; 1927 c 165 § 5; Rem. Supp. 1947 § 3114. Prior: 1915 c 100 § 7; 1905 c 169 § 1; 1903 c 125 § 1.]

Additional notes found at www.leg.wa.gov

16.36.060 Tests, examinations, inspections, samples, examine and copy records—Entry onto property—Unlawful conduct—Seizure of property—Search warrant. (1) The director has the authority to enter a property at any reasonable time to:

(a) Conduct tests, examinations, or inspections to take samples, and to examine and copy records when there is reasonable cause to investigate whether animals on the property or that have been on the property are infected with or have been exposed to disease; and

(b) Determine, when there is reasonable cause to investigate, whether animals on the property have been imported into Washington state in violation of requirements of this chapter, and to conduct tests, examinations, and inspections, take samples, and examine and copy records during such investigations.

(2) It is unlawful for any person to interfere with investigations, tests, inspections, or examinations, or to alter any segregation or identification systems made in connection with tests, inspections, or examinations conducted pursuant to subsection (1) of this section.

(3) If the director is denied access to a property or animals for purposes of this chapter, or a person fails to comply with an order of the director, the director may apply to a court of competent jurisdiction for a search warrant. To show that access is denied, the director shall file with the court an affidavit or declaration containing a description of all attempts to notify and locate the owner or owner's agent and secure consent. The court may issue a search warrant authorizing access to any animal or property at reasonable times to conduct investigations, tests, inspections, or examinations of any animal or property, or to take samples, and examine and copy records, and may authorize seizure or destruction of property. [2011 c 204 § 10; 2010 c 66 § 4; 2004 c 251 § 2; 1998 c 8 § 6; 1985 c 415 § 2; 1979 c 154 § 12; 1947 c 172 § 5; 1927 c 165 § 6; Rem. Supp. 1947 § 3115. Prior: 1895 c 167 § 3.]

Additional notes found at www.leg.wa.gov

16.36.113 Violations of chapter or rules—Civil penalty—Moneys collected—Time and mileage fee. (1) Any person in violation of this chapter or its rules may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation. Each violation is a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this chapter or its rules and may be subject to the civil penalty provided in this section. Moneys collected under this section must be deposited in the state general fund.

(2) The department may charge a time and mileage fee for the cost of an investigation including inspecting animals and related records during an investigation of a proven violation of this chapter. The fee may be up to eighty-five dollars per hour and the current mileage rate set by the office of financial management. The director may increase the hourly fee by rule as necessary to cover costs of investigations. All fees collected pursuant to this subsection shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter. [2011 c 204 § 11; 2007 c 71 § 4.]

16.36.140 Bringing an animal into the state—Securing a certificate of veterinary inspection required—Exemptions—Director's authority—Rules. (1) It is unlawful for a person to bring an animal into Washington

state without first securing a certificate of veterinary inspection, reviewed by the state veterinarian of the state of origin, verifying that the animal meets Washington state animal health requirements. This subsection does not apply to animals that:

- (a) Have been exempted by the director by rule; or
- (b) Will be delivered within twelve hours after entry into Washington state to:

Washington state to:

- (i) An approved, inspected feed lot for slaughter;
- (ii) A federally inspected slaughter plant; or
- (iii) A licensed public livestock market for sale and subsequent delivery within twelve hours to:

- (A) An approved, inspected feed lot for slaughter; or
- (B) A federally inspected slaughter plant.

(2) The director may monitor animals entering Washington state. Persons importing, transporting, receiving, feeding, or housing imported animals shall:

(a) Comply with the requirement and any exemptions specified in subsection (1) of this section; and

(b) Make the animal and related records available for inspection by the director.

(3) The director may adopt and enforce rules necessary to carry out the purpose and provisions of this section. [2011 c 204 § 12; 2010 c 66 § 3.]

16.36.150 Animal disease traceability activities for cattle—Fee—Penalty. (1) The director shall adopt by rule a fee per head on cattle sold or slaughtered in the state or transported out of the state to administer animal disease traceability activities for cattle. The fee must be paid by:

- (a) Sellers of cattle sold in the state, without exception;
- (b) Owners of cattle that are transported out of Washington, unless an exception is provided by rule; and
- (c) Owners of cattle slaughtered in the state.

(2) The fee adopted by the department may not exceed forty cents per head of cattle.

(3)(a) Except where the seller presents proof that the fee has been paid by a meat processor under (c) of this subsection, the fee required in this section must be paid by the owner of cattle receiving a livestock inspection issued by the department under chapter 16.57 RCW in the same manner as livestock inspection fees are collected under RCW 16.57.220.

(b) The fee required in this section must be paid from the owner of cattle not receiving a livestock inspection issued by the department under chapter 16.57 RCW by the fifteenth day of the month following the month the sale or transportation out-of-state occurred, or at a different time as designated by rule.

(c) When cattle are slaughtered, the fee required by this section must be collected from the seller of the cattle by the meat processor. The meat processor must transmit the fee to the department by the fifteenth day of the month following the month the transaction occurred, or at a different time as designated by rule. When cattle owned by a meat processor are slaughtered, the fee must be paid by the meat processor.

(4) All fees received by the department under this section must be deposited in the animal disease traceability account in the agricultural local fund created in RCW 43.23.230 to carry out animal disease traceability activities for cattle and

to compensate the livestock identification program for data and fee collection.

(5) Any person failing to pay the fee established in this section has committed a class 1 civil infraction punishable as provided in RCW 7.80.120. Each violation is a separate and distinct offense. [2011 c 204 § 2.]

16.36.160 Activity report and financial statement—Animal disease traceability activities. By December 1st of each year, the department shall submit an activity report and financial statement on the implementation of the animal disease traceability activities to the animal disease traceability advisory committee created in *section 5 of this act. [2011 c 204 § 3.]

*Reviser's note: Section 5, chapter 204, Laws of 2011 was vetoed by the governor.

Chapter 16.50 RCW

HUMANE SLAUGHTER OF LIVESTOCK

Sections

16.50.110	Definitions.
16.50.120	Humane methods for bleeding or slaughtering livestock required.
16.50.130	Administration of chapter—Rules.

16.50.110 Definitions. For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his or her duly appointed representative.

(3) "Humane method" means either: (a) A method whereby the animal is rendered insensible to pain by mechanical, electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or (b) a method in accordance with the ritual requirements of any religious faith whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

(4) "Livestock" means cattle, calves, sheep, swine, horses, mules, and goats.

(5) "Packer" means any person engaged in the business of slaughtering livestock.

(6) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association and every officer, agent, or employee, thereof. This term shall import either the singular or plural, as the case may be.

(7) "Slaughterer" means any person engaged in the commercial or custom slaughtering of livestock, including custom farm slaughterers. [2011 c 336 § 421; 1967 c 31 § 2.]

16.50.120 Humane methods for bleeding or slaughtering livestock required. No slaughterer or packer shall bleed or slaughter any livestock except by a humane method: PROVIDED, That the director may, by administrative order, exempt a person from compliance with this chapter for a period of not to exceed six months if he or she finds that an earlier compliance would cause such person undue hardship. [2011 c 336 § 422; 1967 c 31 § 3.]

16.50.130 Administration of chapter—Rules. The director shall administer the provisions of this chapter. He or she shall adopt and may from time to time revise rules which shall conform substantially to the rules and regulations promulgated by the secretary of agriculture of the United States pursuant to the federal humane slaughter act of 1958, Public Law 85-765, 72 Stat. 862 and any amendments thereto. Such rules shall be adopted pursuant to the provisions of chapter 34.05 RCW as enacted or hereafter amended concerning the adoption of rules. [2011 c 336 § 423; 1967 c 31 § 4.]

Chapter 16.52 RCW

PREVENTION OF CRUELTY TO ANIMALS

Sections

16.52.011	Definitions—Principles of liability.
16.52.015	Enforcement—Law enforcement agencies and animal care and control agencies.
16.52.085	Removal of animals for feeding and care—Examination—Notice—Euthanasia.
16.52.110	Old or diseased animals at large.
16.52.200	Sentences—Forfeiture of animals—Liability for costs—Penalty—Education, counseling.
16.52.207	Animal cruelty in the second degree—Penalty.
16.52.320	Maliciously killing or causing substantial bodily harm to livestock belonging to another—Penalty.

16.52.011 Definitions—Principles of liability. (1) Principles of liability as defined in chapter 9A.08 RCW apply to this chapter.

(2) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Abandons" means the knowing or reckless desertion of an animal by its owner or the causing of the animal to be deserted by its owner, in any place, without making provisions for the animal's adequate care.

(b) "Animal" means any nonhuman mammal, bird, reptile, or amphibian.

(c) "Animal care and control agency" means any city or county animal control agency or authority authorized to enforce city or county municipal ordinances regulating the care, control, licensing, or treatment of animals within the city or county, and any corporation organized under RCW 16.52.020 that contracts with a city or county to enforce the city or county ordinances governing animal care and control.

(d) "Animal control officer" means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal care and control agency or humane society to aid in the enforcement of ordinances or laws regulating the care and control of animals. For purposes of this chapter, the term "animal control officer" shall be interpreted to include "humane officer" as defined in (g) of this subsection and RCW 16.52.025.

(e) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death, or by a method that causes painless loss of consciousness, and death during the loss of consciousness.

(f) "Food" means food or feed appropriate to the species for which it is intended.

(g) "Humane officer" means any individual employed, contracted, or appointed by an animal care and control

agency or humane society as authorized under RCW 16.52.025.

(h) "Law enforcement agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(i) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, and bison.

(j) "Necessary food" means the provision at suitable intervals of wholesome foodstuff suitable for the animal's age and species and that is sufficient to provide a reasonable level of nutrition for the animal and is easily accessible to the animal.

(k) "Necessary water" means water that is in sufficient quantity and of appropriate quality for the species for which it is intended and that is accessible to the animal.

(l) "Owner" means a person who has a right, claim, title, legal share, or right of possession to an animal or a person having lawful control, custody, or possession of an animal.

(m) "Person" means individuals, corporations, partnerships, associations, or other legal entities, and agents of those entities.

(n) "Similar animal" means: (i) For a mammal, another animal that is in the same taxonomic order; or (ii) for an animal that is not a mammal, another animal that is in the same taxonomic class.

(o) "Substantial bodily harm" means substantial bodily harm as defined in RCW 9A.04.110. [2011 c 172 § 1; 2011 c 67 § 3; 2009 c 287 § 1; 2007 c 376 § 2; 1994 c 261 § 2.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2011 c 67 § 3 and by 2011 c 172 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—Intent—1994 c 261: "The legislature finds there is a need to modernize the law on animal cruelty to more appropriately address the nature of the offense. It is not the intent of this act to remove or decrease any of the exemptions from the statutes on animal cruelty that now apply to customary animal husbandry practices, state game or fish laws, rodeos, fairs under chapter 15.76 RCW, or medical research otherwise authorized under federal or state law. It is the intent of this act to require the enforcement of chapter 16.52 RCW by persons who are accountable to elected officials at the local and state level." [1994 c 261 § 1.]

16.52.015 Enforcement—Law enforcement agencies and animal care and control agencies. (1) Law enforcement agencies and animal care and control agencies may enforce the provisions of this chapter. Animal care and control agencies may enforce the provisions of this chapter in a county or city only if the county or city legislative authority has entered into a contract with the agency to enforce the provisions of this chapter.

(2) Animal control officers enforcing this chapter shall comply with the same constitutional and statutory restrictions concerning the execution of police powers imposed on law enforcement officers who enforce this chapter and other criminal laws of the state of Washington.

(3) Animal control officers have the following enforcement powers when enforcing this chapter:

(a) The power to issue citations based on probable cause to offenders for civil infractions and misdemeanor and gross misdemeanor violations of this chapter or RCW 9.08.070 through 9.08.078 or 81.48.070;

(b) The power to cause a law enforcement officer to arrest and take into custody any person the animal control officer has probable cause to believe has committed or is committing a violation of this chapter or RCW 9.08.070 or 81.48.070. Animal control officers may make an oral complaint to a prosecuting attorney or a law enforcement officer to initiate arrest. The animal control officer causing the arrest shall file with the arresting agency a written complaint within twenty-four hours of the arrest, excluding Sundays and legal holidays, stating the alleged act or acts constituting a violation;

(c) The power to carry nonfirearm protective devices for personal protection;

(d) The power to prepare affidavits in support of search warrants and to execute search warrants when accompanied by law enforcement officers to investigate violations of this chapter or RCW 9.08.070 or 81.48.070, and to seize evidence of those violations.

(4) Upon request of an animal control officer who has probable cause to believe that a person has violated this chapter or RCW 9.08.070 or 81.48.070, a law enforcement agency officer may arrest the alleged offender. [2011 c 172 § 2; 2003 c 53 § 110; 1994 c 261 § 3.]

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

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.085 Removal of animals for feeding and care—Examination—Notice—Euthanasia. (1) If a law enforcement officer or animal control officer has probable cause to believe that an owner of a domestic animal has violated this chapter or a person owns, cares for, or resides with an animal in violation of an order issued under RCW 16.52.200(4) and no responsible person can be found to assume the animal's care, the officer may authorize, with a warrant, the removal of the animal to a suitable place for feeding and care, or may place the animal under the custody of an animal care and control agency. In determining what is a suitable place, the officer shall consider the animal's needs, including its size and behavioral characteristics. An officer may remove an animal under this subsection without a warrant only if the animal is in an immediate life-threatening condition.

(2) If a law enforcement officer or an animal control officer has probable cause to believe a violation of this chapter has occurred, the officer may authorize an examination of a domestic animal allegedly neglected or abused in violation of this chapter by a veterinarian to determine whether the level of neglect or abuse in violation of this chapter is sufficient to require removal of the animal. This section does not condone illegal entry onto private property.

(3) Any owner whose domestic animal is removed pursuant to this chapter shall be given written notice of the circumstances of the removal and notice of legal remedies available to the owner. The notice shall be given by posting at the place of seizure, by delivery to a person residing at the place of seizure, or by registered mail if the owner is known. In making the decision to remove an animal pursuant to this chapter, the officer shall make a good faith effort to contact the animal's owner before removal.

(4) The agency having custody of the animal may euthanize the animal or may find a responsible person to adopt the

animal not less than fifteen business days after the animal is taken into custody. A custodial agency may euthanize severely injured, diseased, or suffering animals at any time. An owner may prevent the animal's destruction or adoption by: (a) Petitioning the district court of the county where the animal was seized for the animal's immediate return subject to court-imposed conditions, or (b) posting a bond or security in an amount sufficient to provide for the animal's care for a minimum of thirty days from the seizure date. If the custodial agency still has custody of the animal when the bond or security expires, the animal shall become the agency's property unless the court orders an alternative disposition. If a court order prevents the agency from assuming ownership and the agency continues to care for the animal, the court shall order the owner to renew a bond or security for the agency's continuing costs for the animal's care. When a court has prohibited the owner from owning, caring for, or residing with a similar animal under RCW 16.52.200(4), the agency having custody of the animal may assume ownership upon seizure and the owner may not prevent the animal's destruction or adoption by petitioning the court or posting a bond.

(5) If no criminal case is filed within fourteen business days of the animal's removal, the owner may petition the district court of the county where the animal was removed for the animal's return. The petition shall be filed with the court, with copies served to the law enforcement or animal care and control agency responsible for removing the animal and to the prosecuting attorney. If the court grants the petition, the agency which seized the animal must deliver the animal to the owner at no cost to the owner. If a criminal action is filed after the petition is filed but before the animal is returned, the petition shall be joined with the criminal matter.

(6) In a motion or petition for the animal's return before a trial, the burden is on the owner to prove by a preponderance of the evidence that the animal will not suffer future neglect or abuse and is not in need of being restored to health.

(7) Any authorized person treating or attempting to restore an animal to health under this chapter shall not be civilly or criminally liable for such action. [2011 c 172 § 3; 2009 c 287 § 2; 1994 c 261 § 6; 1987 c 335 § 1; 1974 ex.s. c 12 § 2.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Additional notes found at www.leg.wa.gov

16.52.110 Old or diseased animals at large. Every owner, driver, or possessor of any old, maimed, or diseased horse, cow, mule, or other domestic animal, who shall permit the same to go loose in any lane, street, square, or lot or place of any city or township, without proper care and attention, for more than three hours after knowledge thereof, shall be guilty of a misdemeanor: PROVIDED, That this shall not apply to any such owner keeping any old or diseased animal belonging to him or her on his or her own premises with proper care. Every sick, disabled, infirm, or crippled horse, ox, mule, cow, or other domestic animal, which shall be abandoned on the public highway, or in any open or enclosed space in any city or township, may, if, after search by a peace officer or officer of such society no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace and public officers to cause the same to be killed on information of such

abandonment. [2011 c 336 § 424; 1901 c 146 § 13; RRS § 3196.]

16.52.200 Sentences—Forfeiture of animals—Liability for costs—Penalty—Education, counseling. (1) The sentence imposed for a misdemeanor or gross misdemeanor violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.

(2) In case of multiple misdemeanor or gross misdemeanor convictions, the sentences shall be consecutive, however the probationary period shall remain two years.

(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur.

(4) Any person convicted of animal cruelty shall be prohibited from owning, caring for, or residing with any similar animals for a period of time as follows:

(a) Two years for a first conviction of animal cruelty in the second degree under RCW 16.52.207;

(b) Permanently for a first conviction of animal cruelty in the first degree under RCW 16.52.205;

(c) Permanently for a second or subsequent conviction of animal cruelty, except as provided in subsection (5) of this section.

(5) If a person has no more than two convictions of animal cruelty and each conviction is for animal cruelty in the second degree, the person may petition the sentencing court in which the most recent animal cruelty conviction occurred, for a restoration of the right to own or possess a similar animal five years after the date of the second conviction. In determining whether to grant the petition, the court shall consider, but not be limited to, the following:

(a) The person's prior animal cruelty in the second degree convictions;

(b) The type of harm or violence inflicted upon the animals;

(c) Whether the person has completed the conditions imposed by the court as a result of the underlying convictions;

(d) Whether the person complied with the prohibition on owning, caring for, or residing with similar animals; and

(e) Any other matters the court finds reasonable and material to consider in determining whether the person is likely to abuse another animal.

The court may delay its decision on forfeiture under subsection (3) of this section until the end of the probationary period.

(6) In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption.

(7) If convicted, the defendant shall also pay a civil penalty of one thousand dollars to the county to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial.

(8) If a person violates the prohibition on owning, caring for, or residing with similar animals under subsection (4) of this section, that person:

(a) Shall pay a civil penalty of one thousand dollars for the first violation;

(b) Shall pay a civil penalty of two thousand five hundred dollars for the second violation; and

(c) Is guilty of a gross misdemeanor for the third and each subsequent violation.

(9) As a condition of the sentence imposed under this chapter or RCW 9.08.070 through 9.08.078, the court may also order the defendant to participate in an available animal cruelty prevention or education program or obtain available psychological counseling to treat mental health problems contributing to the violation's commission. The defendant shall bear the costs of the program or treatment. [2011 c 172 § 4; 2009 c 287 § 3; 2003 c 53 § 113; 1994 c 261 § 14; 1987 c 335 § 2.]

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

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

Additional notes found at www.leg.wa.gov

16.52.207 Animal cruelty in the second degree—Penalty. (1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.

(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

(a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure;

(b) Under circumstances not amounting to animal cruelty in the second degree under (c) of this subsection, abandons the animal; or

(c) Abandons the animal and (i) as a result of being abandoned, the animal suffers bodily harm; or (ii) abandoning the animal creates an imminent and substantial risk that the animal will suffer substantial bodily harm.

(3) Animal cruelty in the second degree is a gross misdemeanor.

(4) In any prosecution of animal cruelty in the second degree under subsection (1) or (2)(a) of this section, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control. [2011 c 172 § 5; 2007 c 376 § 1; 2005 c 481 § 2; 1994 c 261 § 9.]

Finding—Intent—1994 c 261: See note following RCW 16.52.011.

16.52.320 Maliciously killing or causing substantial bodily harm to livestock belonging to another—Penalty.

(1) It is unlawful for a person to, with malice, kill or cause substantial bodily harm to livestock belonging to another person.

(2) A violation of this section constitutes a class C felony.

(3) For the purposes of this section, "malice" has the same meaning as provided in RCW 9A.04.110, but applied to acts against livestock. [2011 c 67 § 1.]

Chapter 16.54 RCW ABANDONED ANIMALS

Sections

16.54.020 Disposition of abandoned animal by person having custody.

16.54.020 Disposition of abandoned animal by person having custody. Any person having in his or her care, custody, or control any abandoned animal as defined in RCW 16.54.010, may deliver such animal to any humane society having facilities for the care of such animals or to any pound maintained by or under contract or agreement with any city or county within which such animal was abandoned. If no such humane society or pound exists within the county the person with whom the animal was abandoned may notify the sheriff of the county wherein the abandonment occurred. [2011 c 336 § 425; 1955 c 190 § 2.]

Chapter 16.57 RCW IDENTIFICATION OF LIVESTOCK

Sections

16.57.015 Livestock identification advisory committee—Rule review—Fee setting.
16.57.160 Cattle or horses—Rules—Mandatory inspection points—Self-inspection certificates.
16.57.353 Rules—Compliance with federal requirements.
16.57.360 Civil infractions—Time and mileage fee.
16.57.440 Unlawful transport or delivery of cattle or horses.

16.57.015 Livestock identification advisory committee—Rule review—Fee setting. (1) The director shall establish a livestock identification advisory committee. The committee shall be composed of six members appointed by the director. One member shall represent each of the following groups: Beef producers, public livestock market operators, horse owners, dairy farmers, cattle feeders, and meat processors. As used in this subsection, "meat processor" means a person licensed to operate a slaughtering establishment under chapter 16.49 RCW or the federal meat inspection act (21 U.S.C. Sec. 601 et seq.). In making appointments, the director shall solicit nominations from organizations representing these groups statewide. The committee shall elect a member to serve as chair of the committee.

(2) The purpose of the committee is to provide advice to the director regarding livestock identification programs administered under this chapter and regarding inspection fees and related licensing fees. The director shall consult the committee before adopting, amending, or repealing a rule under this chapter or altering a fee under RCW 16.58.050, 16.65.030, 16.65.037, or 16.65.090. If the director publishes

[2011 RCW Supp—page 270]

in the state register a proposed rule to be adopted under the authority of this chapter and the rule has not received the approval of the advisory committee, the director shall file with the committee a written statement setting forth the director's reasons for proposing the rule without the committee's approval.

(3) The members of the advisory committee serve three-year terms. However, the director shall by rule provide shorter initial terms for some of the members of the committee to stagger the expiration of the initial terms. The members serve without compensation. The director may authorize the expenses of a member to be reimbursed if the member is selected to attend a regional or national conference or meeting regarding livestock identification. Any such reimbursement shall be in accordance with RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 21 § 51; 2003 c 326 § 3; 1993 c 354 § 10.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

16.57.160 Cattle or horses—Rules—Mandatory inspection points—Self-inspection certificates. (1) The director may adopt rules:

(a) Designating any point for mandatory inspection of cattle or horses or the furnishing of proof that cattle or horses passing or being transported through the point have been inspected or identified and are lawfully being transported;

(b) Providing for issuance of individual horse and cattle identification certificates or other means of horse and cattle identification;

(c) Designating the documents that constitute other satisfactory proof of ownership for cattle and horses. A bill of sale may not be designated as documenting satisfactory proof of ownership for cattle; and

(d) Designating when inspection certificates, certificates of permit, or other transportation documents required by law or rule must designate a physical address of a destination. Cattle and horses must be delivered or transported directly to the physical address of that destination.

(2) A self-inspection certificate may be accepted as satisfactory proof of ownership for cattle if the director determines that the self-inspection certificate, together with other available documentation, sufficiently establishes ownership. Self-inspection certificates completed after June 10, 2010, are not satisfactory proof of ownership for cattle. [2011 c 204 § 13; 2010 c 66 § 6; 2006 c 156 § 3; 2003 c 326 § 18; 1991 c 110 § 3; 1981 c 296 § 16; 1971 ex.s. c 135 § 4; 1959 c 54 § 16.]

Effective date—2006 c 156: See note following RCW 16.57.220.

Additional notes found at www.leg.wa.gov

16.57.353 Rules—Compliance with federal requirements. (1) The director may adopt rules:

(a) To support the agriculture industry in meeting federal requirements for the country-of-origin labeling of meat. Any requirements established under this subsection for country of origin labeling purposes shall be substantially consistent with and shall not exceed the requirements established by the United States department of agriculture; and

(b) In consultation with the livestock identification advisory committee under RCW 16.57.015, to implement federal requirements for animal identification needed to trace the source of livestock for disease control and response purposes.

(2) The director may cooperate with and enter into agreements with other states and agencies of federal government to carry out such systems and to promote consistency of regulation. [2011 1st sp.s. c 21 § 52; 2004 c 233 § 1.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

16.57.360 Civil infractions—Time and mileage fee.

(1)(a) The department is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW.

(b) The violation of any provision of this chapter and/or rules adopted under this chapter shall constitute a class I civil infraction as provided under chapter 7.80 RCW unless otherwise specified herein.

(2) The department may charge a time and mileage fee for the cost of an investigation including inspecting animals and related records during an investigation of a proven violation of this chapter. The fee may be up to eighty-five dollars per hour and the current mileage rate set by the office of financial management. The director may increase the hourly fee by rule as necessary to cover costs of investigations. All fees collected pursuant to this subsection shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter. [2011 c 204 § 15; 2003 c 326 § 42; 1991 c 110 § 7; 1959 c 54 § 36.]

16.57.440 Unlawful transport or delivery of cattle or horses. It is unlawful for a person to transport or deliver cattle or horses to any destination other than the physical address of the destination designated on an inspection certificate, certificate of permit, or other transportation document when required by law or rule. The director may exempt cattle and horses from this requirement by rule. [2011 c 204 § 14.]

Chapter 16.58 RCW

IDENTIFICATION OF CATTLE THROUGH LICENSING OF CERTIFIED FEED LOTS

Sections

16.58.100 Audits—Purpose.

16.58.100 Audits—Purpose. (1) The director shall conduct audits of the cattle received, fed, handled, and shipped by the licensee at each certified feed lot. These audits shall be for the purpose of determining if the cattle correlate with the inspection certificates issued in their behalf and that the certificate of assurance furnished the director by the licensee correlates with his or her assurance that inspected cattle were not commingled with uninspected cattle.

(2) The department shall conduct an audit to determine compliance with RCW 16.36.150 at the time of conducting audits under subsection (1) of this section. [2011 c 204 § 4; 2003 c 326 § 54; 1979 c 81 § 3; 1971 ex.s. c 181 § 10.]

Effective dates—2003 c 326: See RCW 16.57.902.

Chapter 16.60 RCW

FENCES

Sections

- 16.60.020 Partition fence—Reimbursement.
- 16.60.050 Partition fence—Hog fencing.
- 16.60.060 Partition fence—Discontinuance.
- 16.60.075 Damages by breachy animals.
- 16.60.080 Temporary gate across highway.
- 16.60.085 Temporary gate across highway—Auditor may grant permit.
- 16.60.090 Failure to remove gate—Penalty.

16.60.020 Partition fence—Reimbursement. When any fence has been, or shall hereafter be, erected by any person on the boundary line of his or her land and the person owning land adjoining thereto shall make, or cause to be made, an inclosure, so that such fence may also answer the purpose of inclosing his or her ground, he or she shall pay the owner of such fence already erected one-half of the value of so much thereof as serves for a partition fence between them: PROVIDED, That in case such fence has woven wire or other material known as hog fencing, then the adjoining owner shall not be required to pay the extra cost of such hog fencing over and above the cost of erecting a lawful fence, as by law defined, unless such adjoining owner has his or her land fenced with hog fencing and uses the partition fence to make a hog enclosure of his or her land, then he or she shall pay to the one who owns said hog fence one-half of the value thereof. [2011 c 336 § 426; 1907 c 13 § 1; Code 1881 § 2491; 1873 p 448 § 4; 1871 p 65 § 4; 1869 p 324 § 4; RRS § 5444.]

Hog fencing: RCW 16.60.050.

16.60.050 Partition fence—Hog fencing. The respective owners of adjoining inclosures shall keep up and maintain in good repair all partition fences between such inclosures in equal shares, so long as they shall continue to occupy or improve the same; and in case either of the parties shall desire to make such fence capable of turning hogs and the other party does not desire to use it for such purpose, then the party desiring to use it shall have the right to attach hog-fencing material to the posts of such fence, which hog fencing shall remain the property of the party who put it up, and he or she may remove it at any time he or she desires: PROVIDED, That he or she leaves the fence in as good condition as it was when the hog fencing was by him or her attached, the natural decay of the posts excepted. The attaching of such hog fencing shall not relieve the other party from the duty of keeping in repair his or her part of such fence, as to all materials used in said fence additional to said hog fencing. [2011 c 336 § 427; 1907 c 13 § 2; Code 1881 § 2494; 1873 p 449 § 7; 1871 p 65 § 7; 1869 p 325 § 7; RRS § 5447.]

Reimbursement—Hog fencing: RCW 16.60.020.

16.60.060 Partition fence—Discontinuance. When any party shall wish to lay open his or her inclosure, he or she shall notify any person owning adjoining inclosures, and if such person shall not pay to the party giving notice one-half the value of any partition fence between such enclosures, within three months after receiving such notice, the party giving notice may proceed to remove one-half of such fence, as provided in RCW 16.60.055. [2011 c 336 § 428; Code 1881

§ 2496; 1873 p 449 § 9; 1871 p 65 § 9; 1869 p 325 § 9; RRS § 5449.]

16.60.075 Damages by breachy animals. The owner of any animal that is unruly, and in the habit of breaking through or throwing down fences, if after being notified that such animal is unruly and in the habit of breaking through or throwing down fences as aforesaid, he or she shall allow such animal to run at large, shall be liable for all damages caused by such animal, and any and all other animals, that may be in company with such animal. [2011 c 336 § 429; Code 1881 § 2499; 1873 p 449 § 12; 1871 p 66 § 12; 1869 p 326 § 12; RRS § 5452. Formerly RCW 16.04.090, part. FORMER PART OF SECTION: Code 1881 § 2500; 1873 p 450 § 13; 1871 p 66 § 13; RRS § 5453, now codified as RCW 16.60.076.]

16.60.080 Temporary gate across highway. Whenever any inhabitant of this state shall have his or her fences removed by floods or destroyed by fire, the county commissioners of the county in which he or she resides shall have power to grant a license or permit for him or her to put a convenient gate or gates across any highway for a limited period of time, to be named in their order, in order to secure him or her from depredations upon his or her crops until he or she can repair his or her fences, and they shall grant such license or permit for no longer period than they may think absolutely necessary. [2011 c 336 § 430; Code 1881, Bagley's Supp., p 25 § 1; 1871 p 103 § 1; RRS § 5459. FORMER PART OF SECTION: Code 1881, Bagley's Supp., p 25 § 2; 1871 p 104 § 2; RRS § 5460, now codified as RCW 16.60.085.]

16.60.085 Temporary gate across highway—Auditor may grant permit. It shall be lawful for the auditor of any county to grant such permit in vacation, but his or her license shall not extend past the next meeting of the commissioner's court. [2011 c 336 § 431; Code 1881, Bagley's Supp., p 25 § 2; 1871 p 104 § 2; RRS § 5460. Formerly RCW 16.60.080, part.]

16.60.090 Failure to remove gate—Penalty. Any person retaining a gate across the highway after his or her license shall expire, shall be subject to a fine of one dollar for the first day and fifty cents for each subsequent day he or she shall retain the same, and it may be removed by the road supervisor, as an obstruction, at the cost of the person placing or keeping it upon the highway. [2011 c 336 § 432; Code 1881, Bagley's Supp., p 25 § 3; 1871 p 104 § 3; RRS § 5461.]

Chapter 16.65 RCW

PUBLIC LIVESTOCK MARKETS

Sections

16.65.130	Unlawful use of consignor's net proceeds.
16.65.330	Investigations—Powers of director.
16.65.410	Packer's interest in market limited.

16.65.130 Unlawful use of consignor's net proceeds. It shall be unlawful for the licensee to use for his or her own purposes consignor's net proceeds, or funds received by such licensee to purchase livestock on order, through recourse to

[2011 RCW Supp—page 272]

the so-called "float" in the bank account, or in any other manner. [2011 c 336 § 433; 1959 c 107 § 13.]

16.65.330 Investigations—Powers of director. For the purpose of making investigations as provided for in RCW 16.65.320, the director may enter a public livestock market and examine any records required under the provisions of this chapter. The director shall have full authority to issue subpoenas requiring the attendance of witnesses before him or her, together with all books, memorandums, papers, and other documents relative to the matters under investigation, and to administer oaths and take testimony thereunder. [2011 c 336 § 434; 1959 c 107 § 33.]

16.65.410 Packer's interest in market limited. It shall be unlawful for a packer to own or control more than a twenty percent interest in any public livestock market, directly or indirectly through stock ownership or control, or otherwise by himself or herself or through his or her agents or employees. [2011 c 336 § 435; 1959 c 107 § 41.]

Chapter 16.67 RCW

WASHINGTON STATE BEEF COMMISSION

Sections

16.67.035	Regulating beef and beef products—Existing comprehensive scheme—Laws applicable.
16.67.090	Powers and duties—Rule making.
16.67.160	Liability of commission's assets—Immunity of state, commission employees, etc.
16.67.170	Repealed.

16.67.035 Regulating beef and beef products—Existing comprehensive scheme—Laws applicable. The history, economy, culture, and the future of Washington state's agriculture involves the beef industry. In order to develop and promote beef and beef products as part of an existing comprehensive scheme to regulate those products the legislature declares:

(1) That the Washington state beef commission is created;

(2) That it is vital to the continued economic well-being of the citizens of this state and their general welfare that its beef and beef products be properly promoted by (a) enabling the beef industry to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of beef and beef products they produce; and (b) working to stabilize the beef industry by increasing consumption of beef and beef products within the state, the nation, and internationally;

(3) That beef producers operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and includes restrictions on marketing autonomy. Those restrictions may impair the beef producer's ability to compete in local, domestic, and foreign markets;

(4) That it is in the overriding public interest that support for the beef industry be clearly expressed, that adequate protection be given to agricultural commodities, uses, activities, and operations, and that beef and beef products be promoted individually, and as part of a comprehensive industry to:

(a) Enhance the reputation and image of Washington state's agriculture industry;

(b) Increase the sale and use of beef products in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of beef and beef products, and in reference to the various cuts and grades of beef and the uses to which each should be put;

(d) Increase the knowledge of the health-giving qualities and dietetic value of beef products; and

(e) Support and engage in programs or activities that benefit the production, handling, processing, marketing, and uses of beef and beef products;

(5) That this chapter is enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state; and

(6) That the beef industry is a highly regulated industry and that this chapter and the rules adopted under it are only one aspect of the regulated industry. Other regulations and restraints applicable to the beef industry include the:

(a) Beef promotion and research act of 1985, U.S.C. Title 7, chapter 62;

(b) Beef promotion and research, 7 C.F.R., Part 1260;

(c) Agricultural marketing act, 7 U.S.C., section 1621;

(d) USDA meat grading, certification, and standards, 7 C.F.R., Part 54;

(e) Mandatory price reporting, 7 C.F.R., Part 57;

(f) Grazing permits, 43 C.F.R., Part 2920;

(g) Capper-Volstead act, U.S.C. Title 7, chapters 291 and 292;

(h) Livestock identification under chapter 16.57 RCW and rules;

(i) Organic products act under chapter 15.86 RCW and rules;

(j) Intrastate commerce in food, drugs, and cosmetics act under chapter 69.04 RCW and rules, including provisions of 21 C.F.R. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(k) Washington food processing act under chapter 69.07 RCW and rules;

(l) Washington food storage warehouses act under chapter 69.10 RCW and rules;

(m) Animal health under chapter 16.36 RCW and rules; and

(n) Weights and measures under chapter 19.94 RCW and rules. [2011 c 103 § 34; 2002 c 313 § 79.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—2002 c 313: See note following RCW 15.65.020.

16.67.090 Powers and duties—Rule making. The powers and duties of the commission shall include the following:

(1) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(2) To elect a chair and such other officers as it deems advisable;

(3) To employ and discharge at its discretion a manager, secretary, and such other personnel, including attorneys engaged in the private practice of law subject to the review of the attorney general, as the commission determines are necessary and proper to carry out the purposes of this chapter, and to prescribe their duties and powers and fix their compensation;

(4) To adopt, rescind, and amend rules, regulations, and orders for the exercise of its powers hereunder subject to the provisions of chapter 34.05 RCW, except that rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310, the provisions of chapter 19.85 RCW, the regulatory fairness act, and the provisions of RCW 43.135.055 when adoption of the rule is determined by a referendum vote of the affected parties;

(5) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the commission. All records, books, and minutes of the commission shall be kept at such headquarters;

(6) To require a bond of all commission members and employees of the commission in a position of trust in the amount the commission shall deem necessary. The premium for such bond or bonds shall be paid by the commission from assessments collected. Such bond shall not be necessary if any such commission member or employee is covered by any blanket bond covering officials or employees of the state of Washington;

(7) To establish a beef commission revolving fund, such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the commission, except an amount of petty cash for each day's needs not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable; none of the provisions of RCW 43.01.050 as now or hereafter amended shall apply to money collected under this chapter;

(8) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this chapter during each fiscal year;

(9) To incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(10) To borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(11) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, expenditures, moneys, and other financial transactions made and done pursuant to this chapter. Such records, books, and accounts shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty days after completion thereof to the director, the state auditor, and the commission. On such years and in such event the state auditor is unable to audit the records, books, and accounts within six months following the close of the audit period it shall be mandatory that the commission employ a private auditor to make such audit;

(12) To sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(13) To cooperate with any other local, state, or national commission, organization, or agency, whether voluntary or established by state or federal law, including recognized livestock groups, engaged in work or activities similar to the work and activities of the commission created by this chapter and make contracts and agreements with such organizations or agencies for carrying on joint programs beneficial to the beef industry;

(14) To accept grants, donations, contributions, or gifts from any governmental agency or private source for expenditures for any purpose consistent with the provisions of this chapter; and

(15) To operate jointly with beef commissions or similar agencies established by state laws in adjoining states. [2011 c 336 § 436; 2002 c 313 § 82; 2000 c 146 § 2; 1982 c 81 § 3; 1969 c 133 § 8.]

Effective dates—2002 c 313: See note following RCW 15.65.020.

16.67.160 Liability of commission's assets—Immunity of state, commission employees, etc. Obligations incurred by the commission and liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any member officer, employee, or agent of the commission in his or her individual capacity. The members of the commission including employees of the commission shall not be held responsible individually or any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employees, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member. [2011 c 336 § 437; 1969 c 133 § 15.]

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

Chapter 16.68 RCW

DISPOSAL OF DEAD ANIMALS

Sections

16.68.010	Definitions.
16.68.030	Sale, gift, or conveyance prohibited—Exceptions.
16.68.080	Expiration of license—Revocation.
16.68.100	Procedure upon application—Inspection of premises.
16.68.110	Duty of licensees as to premises.
16.68.130	Right of access to premises and records.
16.68.140	Unlawful possession of horse meat—Exceptions.

16.68.010 Definitions. For the purposes of this chapter, unless clearly indicated otherwise by the context:

(1) "Carcass" means all parts, including viscera, of a dead meat food animal;

[2011 RCW Supp—page 274]

(2) "Dead animal" means the body of a meat food animal, or any part or portion thereof: PROVIDED, That the following dead animals are exempt from the provisions of this chapter:

(a) Edible products from a licensed slaughtering establishment;

(b) Edible products where the meat food animal was slaughtered under farm slaughter permit;

(c) Edible products where the meat food animal was slaughtered by a bona fide farmer on his or her own ranch for his or her own consumption;

(d) Hides from meat food animals that are properly identified as to ownership and brands;

(3) "Director" means the director of agriculture;

(4) "Independent collector" means any person who does not own a licensed rendering plant within the state of Washington but is properly equipped and licensed to transport dead animals or packing house refuse to a specified rendering plant.

(5) "Meat food animal" means cattle, horses, mules, asses, swine, sheep, and goats;

(6) "Person" means any individual, firm, corporation, partnership, or association;

(7) "Place of transfer" means an authorized reloading site for the direct transfer of dead animals or packing house refuse from the vehicle making original pickup to the line vehicle that will transport the dead animals or packing house refuse to a specified licensed rendering plant;

(8) "Rendering plant" means any place of business or location where dead animals or any part or portion thereof, or packing house refuse, are processed for the purpose of obtaining the hide, skin, grease residue, or any other by-product whatsoever;

(9) "Substation" means a properly equipped and authorized concentration site for the temporary storage of dead animals or packing house refuse pending final delivery to a licensed rendering plant. [2011 c 336 § 438; 1949 c 100 § 1; Rem. Supp. 1949 § 3142-1.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

16.68.030 Sale, gift, or conveyance prohibited—Exceptions. It is unlawful for any person to sell, offer for sale, or give away a dead animal or convey the same along any public road or land not his or her own: PROVIDED, That dead animals may be sold or given away to and legally transported on highways by a person having an unrevoked, annual license to operate a rendering plant or by a person having an unrevoked, annual license to operate as an independent collector. [2011 c 336 § 439; 1949 c 100 § 3; Rem. Supp. 1949 § 3142-3.]

16.68.080 Expiration of license—Revocation. Any license or permit issued under this chapter shall expire on the thirtieth day of June next subsequent to the date of issue, and may be sooner revoked by the director or his or her authorized representative for violations of this chapter. Any licensee or permittee under this chapter shall have the right to demand a hearing before the director before a revocation is

made permanent. [2011 c 336 § 440; 1949 c 100 § 8; Rem. Supp. 1949 § 3142-8.]

16.68.100 Procedure upon application—Inspection of premises. If the director finds that the locations, buildings, substations equipment, vehicles, places of transfer, or proposed method of operation do not fully comply with the requirements of this chapter, he or she shall notify the applicant by registered letter wherein the same fails to comply. If the applicant whose plant or operation failed to comply notifies the director within ten days from the receipt of the registered letter that he or she will discontinue operations, the fee accompanying the application will be returned to him or her; otherwise no part of the fee will be refunded. If the applicant whose plant failed to comply within a reasonable time, to be fixed by the director or his or her authorized representative, notifies the director that such defects are remedied, a second inspection shall be made. Not more than two inspections may be made on one application. [2011 c 336 § 441; 1949 c 100 § 10; Rem. Supp. 1949 § 3142-10.]

16.68.110 Duty of licensees as to premises. Every licensee under this chapter must comply with the following:

(1) All floors shall be constructed of concrete or other impervious material, shall be kept reasonably clean and in good repair. Floors shall slope at least one-fourth inch to the foot toward drains, and slope at least three-eighths inch to the foot as the drains are approached.

(2) Adequate sanitary drainage must be provided leading to approved grease traps and approved sewage disposal system. No point on the floor shall be over sixteen feet from a drain.

(3) Suitable disposal of paunch contents must be provided in accordance with sanitary regulations.

(4) Walls shall be of impervious material to a height not less than six feet from the floor with a tight union with the floor.

(5) Potable water supply shall be provided for human consumption, washing, and cleaning.

(6) Ample steam shall be provided for cleaning purposes.

(7) Approved toilet and dressing room facilities must be provided for employees.

(8) The building must be kept free from flies, rats, mice, and cockroaches.

(9) Premises must be kept neat and orderly and all buildings must be attractive in appearance.

(10) All rendering plants, substations, and places of transfer shall be so located, arranged, constructed, and maintained, and the operation so conducted at all times as to be consistent with public health and safety.

(11) Suitable facilities for the dipping, washing, and disinfecting of hides obtained from animals that died or were killed on account of an infectious or contagious disease, shall be provided.

(12) Two copies of building or remodeling plans shall be forwarded to the director for his or her approval before such building or remodeling is begun. [2011 c 336 § 442; 1949 c 100 § 12; Rem. Supp. 1949 § 3142-12.]

16.68.130 Right of access to premises and records.

The director or his or her authorized agent, shall have free and uninterrupted access to all parts of premises that come under the provisions of this chapter, for the purpose of making inspections and the examination of records. [2011 c 336 § 443; 1949 c 100 § 14; Rem. Supp. 1949 § 3142-14.]

16.68.140 Unlawful possession of horse meat—

Exceptions. It shall be unlawful for any person to transport, to sell, offer to sell, or have on his or her premises horse meat for other than human consumption unless said horse meat is decharacterized in a manner prescribed by the director: PROVIDED, That this provision shall not apply to carcasses slaughtered by a farmer for consumption on his or her own ranch or to carcasses in the possession of a person licensed under this chapter, or to canned horse meat meeting United States bureau of animal industry regulations. [2011 c 336 § 444; 1949 c 100 § 15; Rem. Supp. 1949 § 3142-18.]

Chapter 16.70 RCW

CONTROL OF PET ANIMALS INFECTED WITH DISEASES COMMUNICABLE TO HUMANS

Sections

16.70.030 Emergency action authorized—Scope—Animals as public nuisance.

16.70.030 Emergency action authorized—Scope—Animals as public nuisance. In the event of an emergency arising out of an outbreak of communicable disease caused by exposure to or contact with pet animals, the secretary is hereby authorized to take any reasonable action deemed necessary by him or her to protect the public health, including but not limited to the use of quarantine or the institution of any legal action authorized pursuant to Title 7 RCW and RCW 43.70.170, 43.70.180, and 43.70.190.

The secretary shall have authority to destroy any pet animal or animals which may reasonably be suspected of having a communicable disease dangerous to humans and such animal or animals are hereby declared to be a public nuisance. [2011 c 336 § 445; 1971 c 72 § 3.]

Title 17

WEEDS, RODENTS, AND PESTS

Chapters

17.04 Weed districts.

17.06 Intercounty weed districts.

17.10 Noxious weeds—Control boards.

17.12 Agricultural pest districts.

17.15 Integrated pest management.

17.21 Washington pesticide application act.

17.24 Insect pests and plant diseases.

17.26 Control of spartina and purple loosestrife.

17.28 Mosquito control districts.

17.34 Pest control compact.

Chapter 17.04 RCW
WEED DISTRICTS

Sections

- 17.04.070 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms of office—Vacancies—Rules and regulations.
17.04.150 Powers—Weed inspector.
17.04.190 Duties of weed inspector.
17.04.200 Violation of rules and regulations—Notice to destroy weeds—Destruction.
17.04.210 Statement of expense—Hearing.
17.04.230 Appellate review—Notice—Cost bond.
17.04.280 Officials of district may enter lands—Penalty for prevention.

17.04.070 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms of office—Vacancies—Rules and regulations. If the board of county commissioners establish such district it shall call a special meeting to be held within such district for the purpose of electing three directors for such district. No person shall be eligible to hold the office of director who is not a qualified elector of the state of Washington and a resident and landowner within such district. Such meeting shall be held not less than thirty nor more than ninety days from the date when such district is established by such board.

Notice of such meeting shall be given by the county auditor by publication once a week for three successive weeks in a newspaper of general circulation in such district, and by posting such notice for not less than ten days before the date fixed for such meeting in three public places within the boundaries of such district. The notices shall state the object of the meeting and the time and place when the same shall be held.

At the time and place fixed for the meeting the county commissioner in whose commissioner district such district is located shall act as chair and call the meeting to order. The chair shall appoint two persons to assist him or her in conducting the election, one of whom shall act as clerk. If such county commissioner be not present the electors of such district then present shall elect a chair of the meeting.

Every person who is a landowner within such district and a qualified elector of the state of Washington shall be entitled to vote at such meeting. Any person offering to vote may be challenged by any legally qualified elector of such district, and the chair of such meeting shall thereupon administer to the person challenged an oath in substance as follows: "You do swear (or affirm) that you are a citizen of the United States and a qualified elector of the state of Washington and an owner of land within the boundaries of weed district No. . . . of county (giving number of district and name of county)." If the challenged person shall take such oath or make such affirmation, he or she shall be entitled to vote; otherwise his or her vote shall not be received. Any person making a false oath, or affirmation, or any person illegally voting at such meeting, shall be punished as provided in the general election laws of the state for illegal voting.

The vote shall be by secret ballot, on white paper of uniform size and quality, of such arrangement that when names are written thereon, the same may be folded so as not to disclose the names. The elector shall write the names of three persons that he or she desires as the first directors of such district and shall fold his or her ballot and hand the same to the chair of the meeting who shall deposit it in a ballot box pro-

vided for that purpose. The clerk shall thereupon write the name of such person on a list as having voted at such election. After all persons present and entitled to vote have voted, the chair shall declare the election closed, and shall, with the assistance of the clerk and the other person appointed as assistant, proceed to count the ballots. The person receiving the greatest number of votes shall be elected as director for a term ending three years from the first Monday in March following his or her election; the person receiving the second greatest number of votes shall be elected for a term ending two years from the first Monday in March following his or her election, and the person receiving the third greatest number of votes shall be elected for a term ending one year from the first Monday of March following his or her election.

Annually thereafter, there shall be held a meeting of the electors of such district on the last Monday in February, except that the directors may, by giving the same notice as is required for the initial meeting, fix an earlier time for the annual meeting on any nonholiday during the months of December, January, or February. At such meeting one director shall be elected to succeed the director whose term will expire on the first Monday in March following. The directors shall call the annual meeting, and shall fix the time and place where the same shall be held and shall give the same notice thereof as provided for the initial meeting. The annual meeting shall be conducted in the same manner as is provided for the initial meeting, and the qualifications of electors at such annual meeting shall be the same as is required for the initial meeting. In conducting directors' elections, the chair may accept nominations from the floor but voting shall not be limited to those nominated.

All directors shall hold office for the term for which they are elected, and until their successors are elected and qualified. In case of a vacancy occurring in the office of any director, the county commissioners of the county in which such district is located shall appoint a qualified person to fill the vacancy for the unexpired term. The board of directors shall elect one of its members chair and may appoint a secretary who need not be a member of the board, and who shall be paid such compensation as the board may determine. Each director shall furnish a bond in the sum of one thousand dollars, which may be a surety company bond or property bond approved by the board of county commissioners, which bond shall be filed with the county commissioners and shall be conditioned for the faithful discharge of his or her duties. The cost of such bond shall be paid by the district the same as other expenses of the district. At any annual meeting the method for destroying, preventing, and exterminating weeds of such district as set forth in the petition, and the rules and regulations adopted by such district, may be changed by a majority vote of the qualified electors present at such meeting, or a special meeting may be called for that purpose, notice of which meeting and of such proposed changes to be voted on, shall be given to all landowners residing within the district by mailing a copy of such notice and of such proposed changes to the address of such landowner at least one week before the date fixed for such special meeting. The qualified electors of any weed district, at any annual meeting, may make other weeds that are not on the petition subject to control by the weed district by a two-thirds vote of the electors present: PROVIDED, That said weeds have been classified

by the agricultural experiment station of Washington State University as noxious and: PROVIDED FURTHER, That the directors of the weed district give public notice in the manner required for initial meetings of the proposed new control of said weeds by the weed district. [2011 c 336 § 446; 1971 ex.s. c 292 § 15; 1961 c 250 § 2; 1929 c 125 § 4; RRS § 2774-1. Formerly RCW 17.04.070 through 17.04.140.]

Elections: Chapter 29A.84 RCW.

Additional notes found at www.leg.wa.gov

17.04.150 Powers—Weed inspector. The board of directors of such weed district shall have power:

(1) To adopt rules and regulations, plans, methods, and means for the purpose of destroying, preventing, and exterminating the weed or weeds specified in the petition, and to supervise, carry out, and enforce such rules, regulations, plans, methods, and means.

(2) To appoint a weed inspector and to require from him or her a bond in such sum as the directors may determine for the faithful discharge of his or her duties, and to pay the cost of such bond from the funds of such district; and to direct such weed inspector in the discharge of his or her duties; and to pay such weed inspector from the funds of such district such per diem or salary for the time employed in the discharge of his or her duties as the directors shall determine. [2011 c 336 § 447; 1961 c 250 § 3; 1929 c 125 § 9; RRS § 2778-1. Prior: 1921 c 150 § 6.]

17.04.190 Duties of weed inspector. It shall be the duty of the weed inspector to carry out the directions of the board of directors and to see that the rules and regulations adopted by the board are carried out. He or she shall personally deliver or mail to each resident landowner within such district and to any lessee or person in charge of any land within such district and residing in such district, a copy of the rules and regulations of such district; and he or she shall personally deliver a copy thereof to nonresident landowners or shall deposit a copy of the same in the United States post office in an envelope with postage prepaid thereon addressed to the last known address of such person as shown by the records of the county auditor; and in event no such address is available for mailing he or she shall post a copy of such rules and regulations in a conspicuous place upon such land. A record shall be kept by the weed inspector of such dates of mailing, posting, or delivering such rules and regulations. In case of any railroad such rules and regulations shall be delivered to the section foreman, or to any official of the railroad having offices within the state. Such rules and regulations must be delivered, posted, or mailed by the weed inspector as herein provided at least ten days before the time to start any annual operations necessary to comply with such rules and regulations: PROVIDED, That after such district shall have been in operation two years such rules and regulations shall be delivered to resident landowners only once every three years, unless such rules and regulations are changed. [2011 c 336 § 448; 1961 c 250 § 5; 1929 c 125 § 10; RRS § 2778-2.]

17.04.200 Violation of rules and regulations—Notice to destroy weeds—Destruction. (1) If the weed inspector, or the board of directors, shall find that the rules and regula-

tions of the weed district are not being carried out on any one or more parcels of land within such district, the weed inspector shall give forthwith a notice in writing, on a form to be prescribed by the directors, to the owners, tenants, mortgagees, and occupants, or to the accredited resident agent of any nonresident owner of such lands within the district whereon noxious weeds are standing, being or growing and in danger of going to seed, requiring him or her to cause the same to be cut down, otherwise destroyed or eradicated on such lands in the manner and within the time specified in the notice, such time, however, not to exceed seven days. It shall be the duty of the county auditor and county treasurer to make available to the weed inspector lists of owners, tenants, and mortgagees of lands within such district;

(2) If a resident agent of any nonresident owner of lands where noxious weeds are found standing, being, or growing cannot be found, the local weed inspector shall post said notice in the form provided by the directors in three conspicuous places on said land, and in addition to posting said notice the local weed inspector shall, at the same time mail a copy thereof by registered or certified mail with return receipt requested to the owner of such nonresident lands, if his or her post office address is known or can be ascertained by said inspector from the last tax list in the county treasurer's office, and it shall be the duty of the treasurer to furnish such lists upon request by the weed inspector. Proof of such serving, posting, and mailing of notice by the weed inspector shall be made by affidavit forthwith filed in the office of the county auditor and it shall be the duty of the county auditor to accept and file such affidavits;

(3) If the weeds are not cut down, otherwise destroyed, or eradicated within the time specified in said notice, the local weed inspector shall personally, or with such help as he or she may require, cause the same to be cut down or otherwise destroyed in the manner specified in said notice. [2011 c 336 § 449; 1961 c 250 § 6; 1937 c 193 § 2; 1929 c 125 § 11; RRS § 2778-3. Prior: 1921 c 150 § 9, part.]

17.04.210 Statement of expense—Hearing. The weed inspector shall keep an accurate account of expenses incurred by him or her in carrying out the provisions of this chapter with respect to each parcel of land entered upon, and the prosecuting attorney of the county or the attorney for the weed district shall cause to be served, mailed, or posted in the same manner as provided in this chapter for giving notice to destroy noxious weeds, a statement of such expenses, including description of the land, verified by oath of the weed inspector to the owner, lessee, mortgagee, occupant or agent, or person having charge of said land, and coupled with such statement shall be a notice subscribed by said prosecuting attorney or attorney for the weed district and naming a time and place when and where such matter will be brought before the board of directors of such district for hearing and determination, said statement or notice to be served, mailed, or posted, as the case may be, at least ten days before the time for such hearing. [2011 c 336 § 450; 1961 c 250 § 7; 1929 c 125 § 12; RRS § 2778-4.]

17.04.230 Appellate review—Notice—Cost bond. Any interested party may appeal from the decision and order

of the board of directors of such district to the superior court of the county in which such district is located, by serving written notice of appeal on the chair of the board of directors and by filing in the office of the clerk of the superior court a copy of said notice of appeal with proof of service attached, together with a good and sufficient cost bond in the sum of two hundred dollars, said cost bond to run to such district and in all respects to comply with the laws relating to cost bonds required of nonresident plaintiffs in the superior court. Said notice must be served and filed within ten days from the date of the decision and order of such board of directors, and said bond must be filed within five days after the filing of such notice of appeal. Whenever notice of appeal and the cost bond as herein provided shall have been filed with the clerk of the superior court, the clerk shall notify the board of directors of such district thereof, and such board shall forthwith certify to said court all notices and records in said matters, together with proof of service, and a true copy of the order and decision pertaining thereto made by such board. If no appeal be perfected within ten days from the decision and order of such board, the same shall be deemed confirmed and the board shall certify the amount of such charges to the county treasurer who shall enter the same on the tax rolls against the land. When an appeal is perfected the matter shall be heard in the superior court de novo and the court's decision shall be conclusive on all persons served under this chapter: PROVIDED, That appellate review of the order or decision of the superior court in the manner provided by existing laws, and upon the conclusion of such review, the amount of charges and costs adjudged to be paid shall be certified by the clerk of the superior court to the county treasurer and said treasurer shall proceed to enter the same on his or her rolls against the lands affected. [2011 c 336 § 451; 1988 c 202 § 21; 1971 c 81 § 56; 1929 c 125 § 14; RRS § 2778-6. Formerly RCW 17.04.220, part, and 17.04.230.]

Appeals to supreme court: Rules of court: See Rules of Appellate Procedure.

Cost bonds, civil procedure: RCW 4.84.210 through 4.84.240.

Additional notes found at www.leg.wa.gov

17.04.280 Officials of district may enter lands—Penalty for prevention. All weed district directors, all weed inspectors, and all official agents of all weed districts, in the performance of their official duties, have the right to enter and go upon any of the lands within their weed district at any reasonable time for any reason necessary to effectuate the purposes of the weed district. Any person who prevents or threatens to prevent any lawful agent of the weed district, after said agent identifies himself or herself and the purpose for which he or she is going upon the land, from entering or going upon the land within said weed district at a reasonable time and for a lawful purpose of the weed district, is guilty of a misdemeanor. [2011 c 336 § 452; 1961 c 250 § 10.]

Chapter 17.06 RCW

INTERCOUNTY WEED DISTRICTS

Sections

- 17.06.040 Hearing—Boundaries—Order of establishment.
17.06.050 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms—Rules.

17.06.060 Directors powers and duties—Taxation—Treasurer—Costs.

17.06.040 Hearing—Boundaries—Order of establishment. At the time and place fixed for such hearing, with the chair of the principal board acting as chair, the respective boards shall determine by a majority vote of each of the boards of county commissioners of the counties whether such intercounty weed district shall be created, and if they determine that such district shall be created, the respective boards shall fix the boundaries of the portion of the proposed district within their respective counties, but they shall not modify the purposes of the petition with respect to the weed or weeds to be destroyed, prevented, and exterminated as set forth in the petition, and they shall not enlarge the boundary of the proposed district, or enlarge or change the boundary or boundaries of any district or districts already formed without first giving notice, as provided in RCW 17.06.030, to all landowners interested. If the respective bodies shall determine that the weed district petitioned for shall be created each such board shall thereupon enter an order establishing and defining the boundary lines of the proposed district within its respective county. A number shall be assigned to such weed district which shall be the lowest number not already taken or adopted by an intercounty weed district in the state, and thereafter such district shall be known as "weed district No. . . .", inserting in the blank the number of the district.

If any county represented does not by a majority vote of its board of commissioners support the petition for an intercounty district, the petition shall be dismissed. [2011 c 336 § 453; 1959 c 205 § 4.]

17.06.050 Meetings—Qualifications of electors and directors—Elections—Officers—Bonds—Terms—Rules. If the respective boards of county commissioners establish such district the chair of the principal board shall call a special meeting of landowners to be held within such district for the purpose of electing three directors for such district. No person shall be eligible to hold the office of director who is not a qualified elector of the state of Washington and a resident and landowner within such district. Such meeting shall be held not less than thirty nor more than ninety days from the date when such district is established.

Notice of such meeting shall be given by the principal county auditor by publication once a week for three successive weeks in a newspaper of general circulation in such district, and by posting such notice for not less than ten days before the date fixed for such meeting in three public places within the boundaries of such district. The notices shall state the object of the meeting and the time and place when the same shall be held.

At the time and place fixed for the meeting the chair shall appoint two persons to assist him or her in conducting the election, one of whom shall act as clerk. If such chair be not present the electors of such district then present shall elect a chair of the meeting.

Every person who is a landowner within such district and a qualified elector of the state of Washington shall be entitled to vote at such meeting. Any person offering to vote may be challenged by any legally qualified elector of such district, and the chair of such meeting shall thereupon administer to the person challenged an oath in substance as follows: "You

do swear (or affirm) that you are a citizen of the United States and a qualified elector of the state of Washington and an owner of land within the boundaries of weed district No. . . . (giving number of district)." If the challenged person shall take such oath or make such affirmation, he or she shall be entitled to vote; otherwise his or her vote shall not be received. Any person making a false oath, or affirmation, or any person illegally voting at such meeting, shall be punished as provided in the general election laws of the state for illegal voting.

The vote shall be by secret ballot, on white paper of uniform size and quality, of such arrangement that when names are written thereon, the same may be folded so as not to disclose the names. The elector shall write the names of three persons that he or she desires as the first directors of such district and shall fold his or her ballot and hand the same to the chair of the meeting who shall deposit it in a ballot box provided for that purpose. The clerk shall thereupon write the name of such person on a list as having voted at such election. After all persons present and entitled to vote have voted, the chair shall declare the election closed, and shall, with the assistance of the clerk and the other person appointed as assistant, proceed to count the ballots. The person receiving the greatest number of votes shall be elected as director for a term ending three years from the first Monday in March following his or her election; the person receiving the second greatest number of votes shall be elected for a term ending two years from the first Monday in March following his or her election, and the person receiving the third greatest number of votes shall be elected for a term ending one year from the first day of March following his or her election.

Annually thereafter, there shall be held a meeting of the electors of such district on the first Monday in February. At such meeting one director shall be elected to succeed the director whose term will expire on the first Monday in March following. The directors shall call the annual meeting, and shall fix the time when and place where the same shall be held and shall give the same notice thereof as provided for the initial meeting. The annual meeting shall be conducted in the same manner as is provided for the initial meeting, and the qualifications of electors at such annual meeting shall be the same as is required for the initial meeting.

All directors shall hold office for the term for which they are elected, and until their successors are elected and qualified. In case of a vacancy occurring in the office of any director, the remaining members of the board of directors shall appoint a qualified person to fill the vacancy for the unexpired term. The board of directors shall elect one of its members chair and may appoint a secretary who need not be a member of the board, and who shall be paid such compensation as the board may determine. Each director shall furnish a bond in the sum of one thousand dollars, which may be a surety company bond or property bond approved by the principal board of county commissioners, which bond shall be filed with the same board and shall be conditioned for the faithful discharge of his or her duties. The cost of such bond shall be paid by the district the same as other expenses of the district.

At any annual meeting the method for destroying, preventing, and exterminating weeds of such district as set forth in the petition, and the rules and regulations adopted by such

district, may be changed by a majority vote of the qualified electors present at such meeting, or a special meeting may be called for that purpose, notice of which meeting and of such proposed changes to be voted on, shall be given to all landowners residing within the district by mailing a copy of such notice and of such proposed changes to the address of such landowner at least one week before the date fixed for such special meeting. [2011 c 336 § 454; 1971 ex.s. c 292 § 16; 1959 c 205 § 5.]

Additional notes found at www.leg.wa.gov

17.06.060 Directors powers and duties—Taxation—Treasurer—Costs. The board of directors of an intercounty weed district shall have the same powers and duties as the board of directors of a weed district located entirely within one county, and all the provisions of chapter 17.04 RCW are hereby made applicable to intercounty weed districts: PROVIDED, That in the case of evaluation, assessment, collection, apportionment, and any other allied power or duty relating to taxes in connection with the district, the action shall be performed by the officer or board of the county for that area of the district which is located within his or her respective county, and all materials, information, and other data and all moneys collected shall be submitted to the proper officer of the county of that part of the district in which the greatest amount of acreage is located. Any power which may be or duty which shall be performed in connection therewith shall be performed by the officer or board receiving such as though only a district in a single county were concerned. All moneys collected from such area constituting a part of such district that should be paid to such district shall be delivered to the principal county treasurer who shall be ex officio treasurer of such district. All other materials, information, or data relating to the district shall be submitted to the district board of directors.

Any costs or expenses incurred under this section shall be borne proportionately by each county involved. [2011 c 336 § 455; 1959 c 205 § 6.]

Chapter 17.10 RCW

NOXIOUS WEEDS—CONTROL BOARDS

Sections

- | | |
|-----------|---|
| 17.10.080 | State noxious weed list—Hearing—Adoption—Guidelines for placing plants on the list—Dissemination. |
| 17.10.090 | State noxious weed list—Selection of weeds for control by county board. |
| 17.10.280 | Lien for labor, material, equipment used in controlling noxious weeds. |
| 17.10.290 | Lien for labor, material, equipment used in controlling noxious weeds—Notice of lien. |

17.10.080 State noxious weed list—Hearing—Adoption—Guidelines for placing plants on the list—Dissemination. (1) The state noxious weed control board shall each year or more often, following a hearing, adopt a state noxious weed list.

(2) The state noxious weed control board shall adopt guidelines by rule for placing plants on the state noxious weed list. These guidelines must include criteria for reconsideration of proposed new species that were not adopted by the state noxious weed control board, including the need for

the board to be presented with additional data from scientific sources regarding any invasive and noxious qualities of the species and from existing positive economic benefits before taking any action.

(3) Any person may request during a comment period established by the state noxious weed control board the inclusion, deletion, or designation change of any plant to the state noxious weed list.

(4) The state noxious weed control board shall send a copy of the list to each activated county noxious weed control board, to each weed district, and to the county legislative authority of each county with an inactive noxious weed control board.

(5) The record of rule making must include the written findings of the board for the inclusion of each plant on the list. The findings shall be made available upon request to any interested person. [2011 c 126 § 1; 1997 c 353 § 10; 1989 c 175 § 57; 1987 c 438 § 8; 1975 1st ex.s. c 13 § 5; 1969 ex.s. c 113 § 8.]

Additional notes found at www.leg.wa.gov

17.10.090 State noxious weed list—Selection of weeds for control by county board. (1) Each county noxious weed control board shall, within ninety days of the adoption of the state noxious weed list from the state noxious weed control board and following a hearing, select those weeds from the class C list and those weeds from the class B list not designated for control in the noxious weed control region in which the county lies that it finds necessary to be controlled in the county.

(2) The weeds thus selected and all class A weeds and those class B weeds that have been designated for control in the noxious weed control region in which the county lies shall be classified within that county as noxious weeds, and those weeds comprise the county noxious weed list.

(3) Nothing in this chapter limits a county noxious weed control board, or other branch of county or city government, from conducting education, outreach, or other assistance regarding plant species not included on the state noxious weed list if the county or city determines that the plant species causes localized risk or concern. [2011 c 126 § 2; 1997 c 353 § 11; 1987 c 438 § 9; 1969 ex.s. c 113 § 9.]

17.10.280 Lien for labor, material, equipment used in controlling noxious weeds. Every activated county noxious weed control board performing labor, furnishing material, or renting, leasing, or otherwise supplying equipment, to be used in the control of noxious weeds, or in causing control of noxious weeds, upon any property pursuant to the provisions of chapter 17.10 RCW has a lien upon such property for the labor performed, material furnished, or equipment supplied whether performed, furnished, or supplied with the consent of the owner, or his or her agent, of such property, or without the consent of said owner or agent. [2011 c 336 § 456; 1987 c 438 § 35; 1975 1st ex.s. c 13 § 13.]

17.10.290 Lien for labor, material, equipment used in controlling noxious weeds—Notice of lien. Every county noxious weed control board furnishing labor, materials, or supplies or renting, leasing, or otherwise supplying equip-

[2011 RCW Supp—page 280]

ment to be used in the control of noxious weeds upon any property pursuant to RCW 17.10.160 and 17.10.170 or pursuant to an order under RCW 17.10.210 as now or hereafter amended, shall give to the owner or reputed owner or his or her agent a notice in writing, within ninety days from the date of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment, which notice shall cover the labor, material, supplies, or equipment furnished or leased, as well as all subsequent labor, materials, supplies, or equipment furnished or leased, stating in substance and effect that such county noxious weed control board is furnishing or has furnished labor, materials and supplies or equipment for use thereon, with the name of the county noxious weed control board ordering the same, and that a lien may be claimed for all materials and supplies or equipment furnished by such county noxious weed control board for use thereon, which notice shall be given by mailing the same by registered or certified mail in an envelope addressed to the owner at his or her place of residence or reputed residence. [2011 c 336 § 457; 1987 c 438 § 36; 1975 1st ex.s. c 13 § 14.]

Chapter 17.12 RCW

AGRICULTURAL PEST DISTRICTS

Sections

- 17.12.060 Supervision of the district.
17.12.080 Levies on state and county lands—Levies on state lands to be added to rental or purchase price.

17.12.060 Supervision of the district. The agricultural expert in counties having an agricultural expert, shall under the direction of Washington State University have general supervision of the methods and means of preventing, destroying, or exterminating any animals or rodents as herein mentioned within his or her county, and of how the funds of any pest district shall be expended to best accomplish the purposes for which such funds were raised; in counties having no such agricultural expert each county commissioner shall be within his or her respective commissioner district, ex officio supervisor, or the board may designate some such person to so act, and shall fix his or her compensation therefor. Whenever any member of the board shall act as supervisor he or she shall be entitled to his or her actual expenses and his or her per diem as county commissioner the same as if he or she were doing other county business. [2011 c 336 § 458; 1977 ex.s. c 169 § 4; 1919 c 152 § 6; RRS § 2806.]

Reviser's note: The law authorizing the employment of agricultural experts was 1913 c 18 as amended by 1919 c 193 but since repealed by 1949 c 181 which authorizes cooperative extension work in agriculture and home economics. See RCW 36.50.010.

Additional notes found at www.leg.wa.gov

17.12.080 Levies on state and county lands—Levies on state lands to be added to rental or purchase price. Whenever there shall be included within any pest district lands belonging to the state or to the county the board of county commissioners shall determine the amount of the tax or assessment for which such land would be liable if the same were in private ownership for each subdivision of forty acres or fraction thereof. The assessor shall transmit to the county

commissioners a statement of the amounts so due from county lands and the county commissioners shall appropriate from the current expense fund of the county sufficient money to pay such amounts. A statement of the amounts due from state lands within each county shall be annually forwarded to the commissioner of public lands who shall examine the same and if he or she finds the same correct and that the determination was made according to law, he or she shall certify the same and issue a warrant for the payment of same against any funds in the state treasury appropriated for such purposes.

The commissioner of public lands shall keep a record of the amounts so paid on account of any state lands which are under lease or contract of sale and such amounts shall be added to and become a part of the annual rental or purchase price of the land, and shall be paid annually at the time of payment of rent or payment of interest or purchase price of such land. When such amounts shall be collected by the commissioner of public lands it shall be paid into the general fund in the state treasury. [2011 c 336 § 459; 1973 c 106 § 11; 1919 c 152 § 8; RRS § 2808. Formerly RCW 17.12.080 and 17.12.090.]

Chapter 17.15 RCW

INTEGRATED PEST MANAGEMENT

Sections

17.15.030 Integrated pest management training—Designated coordinator.

17.15.030 Integrated pest management training—Designated coordinator. (1) A state agency or institution listed in RCW 17.15.020 shall provide integrated pest management training for employees responsible for pest management.

(2) A state agency or institution listed in RCW 17.15.020 shall designate an integrated pest management coordinator. [2011 c 103 § 36; 1997 c 357 § 4.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Chapter 17.21 RCW

WASHINGTON PESTICIDE APPLICATION ACT

Sections

17.21.100 Recordkeeping by licensees and agricultural users.
 17.21.150 Violation of chapter—Unlawful acts.
 17.21.170 Commercial pesticide applicator license—Amount of bond or insurance required—Notice of reduction or cancellation by surety or insurer.

17.21.100 Recordkeeping by licensees and agricultural users. (1) Certified applicators licensed under the provisions of this chapter, persons required to be licensed under this chapter, all persons applying pesticides to more than one acre of agricultural land in a calendar year, including public entities engaged in roadside spraying of pesticides, and all other persons making landscape applications of pesticides to types of property listed in RCW 17.21.410(1) (b), (c), (d), and (e), shall keep records for each application which shall include the following information:

- (a) The location of the land where the pesticide was applied;
- (b) The year, month, day and beginning and ending time of the application of the pesticide each day the pesticide was applied;
- (c) The product name used on the registered label and the United States environmental protection agency registration number, if applicable, of the pesticide which was applied;
- (d) The crop or site to which the pesticide was applied;
- (e) The amount of pesticide applied per acre or other appropriate measure;
- (f) The concentration of pesticide that was applied;
- (g) The number of acres, or other appropriate measure, to which the pesticide was applied;
- (h) The licensed applicator’s name, address, and telephone number and the name of the individual or individuals making the application and their license number, if applicable;
- (i) The direction and estimated velocity of the wind during the time the pesticide was applied. This subsection (i) shall not apply to applications of baits in bait stations and pesticide applications within structures; and
- (j) Any other reasonable information required by the director in rule.

(2)(a) The required information shall be recorded on the same day that a pesticide is applied.

(b) A commercial pesticide applicator who applies a pesticide to an agricultural crop or agricultural lands shall provide a copy of the records required under subsection (1) of this section for the application to the owner, or to the lessee if applied on behalf of the lessee, of the lands to which the pesticide is applied. Records provided by a commercial pesticide applicator to the owner or lessee of agricultural lands under this subsection need not be provided on a form adopted by the department.

(3) The records required under this section shall be maintained and preserved by the licensed pesticide applicator or such other person or entity applying the pesticides for no less than seven years from the date of the application of the pesticide to which such records refer. If the pesticide was applied by a commercial pesticide applicator to the agricultural crop or agricultural lands of a person who employs one or more employees, as "employee" is defined in RCW 49.70.020, the records shall also be kept by the employer for a period of seven years from the date of the application of the pesticide to which the records refer.

(4)(a) The pesticide records shall be readily accessible to the department for inspection. Copies of the records shall be provided on request to: The department; the department of labor and industries; treating health care personnel initiating diagnostic testing or therapy for a patient with a suspected case of pesticide poisoning; the department of health; and, in the case of an industrial insurance claim filed under Title 51 RCW with the department of labor and industries, the employee or the employee’s designated representative. In addition, the director may require the submission of the records on a routine basis within thirty days of the application of any restricted use pesticide in prescribed areas controlling the use of the restricted use pesticide. When a request for records is made under this subsection by treating health care personnel and the record is required for determining treat-

ment, copies of the record shall be provided immediately. For all other requests, copies of the record shall be provided within seventy-two hours.

(b) Copies of records provided to a person or entity under this subsection (4) shall, if so requested, be provided on a form adopted under subsection (7) of this section. Information for treating health care personnel shall be made immediately available by telephone, if requested, with a copy of the records provided within twenty-four hours.

(5) If a request for a copy of the record is made under this section from an applicator referred to in subsection (1) of this section and the applicator refuses to provide a copy, the requester may notify the department of the request and the applicator's refusal. Within seven working days, the department shall request that the applicator provide the department with all pertinent copies of the records, except that in a medical emergency the request shall be made within two working days. The applicator shall provide copies of the records to the department within twenty-four hours after the department's request.

(6) The department shall include inspection of the records required under this section as part of any on-site inspection conducted under this chapter on agricultural lands. The inspection shall determine whether the records are readily transferable to a form adopted by the department and are readily accessible to employees. However, no person subject to a department inspection may be inspected under this subsection (6) more than once in any calendar year, unless a previous inspection has found recordkeeping violations. If recordkeeping violations are found, the department may conduct reasonable multiple inspections, pursuant to rules adopted by the department. Nothing in this subsection (6) limits the department's inspection of records pertaining to pesticide-related injuries, illnesses, fatalities, accidents, or complaints.

(7) The department of agriculture and the department of labor and industries shall jointly adopt, by rule, forms that satisfy the information requirements of this section. [2011 c 103 § 37; 1994 c 283 § 9; 1992 c 173 § 1; 1989 c 380 § 39; 1987 c 45 § 28; 1971 ex.s. c 191 § 3; 1961 c 249 § 10.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

17.21.150 Violation of chapter—Unlawful acts. A person who has committed any of the following acts is declared to be in violation of this chapter:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;

(2) Applied worthless or improper pesticides;

(3) Operated a faulty or unsafe apparatus;

(4) Operated in a faulty, careless, or negligent manner;

(5) Refused or neglected to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the director including a final order of the director directing payment of a civil penalty. In an adjudicative proceeding arising from the department's denial of a license for failure to pay a civil penalty the subject shall be limited to whether the payment was made and the proceeding may not be used to collaterally attack the final order;

(6) Refused or neglected to keep and maintain the pesticide application records required by rule, or to make reports when and as required;

(7) Made false or fraudulent records, invoices, or reports;

(8) Acted as a certified applicator without having provided direct supervision to an unlicensed person;

(9) Operated an unlicensed apparatus or an apparatus without a license plate issued for that particular apparatus;

(10) Used fraud or misrepresentation in making an application for a license or renewal of a license;

(11) Is not qualified to perform the type of pest control under the conditions and in the locality in which he or she operates or has operated, regardless of whether or not he or she has previously passed a pesticide license examination;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this chapter, combined or conspired with such a licensed or an unlicensed person to evade the provisions of this chapter, or allowed one's license to be used by an unlicensed person;

(13) Knowingly made false, misleading, or erroneous statements or reports during or after an inspection concerning any infestation or infection of pests found on land or in connection with any pesticide complaint or investigation;

(14) Impersonated any state, county or city inspector or official;

(15) Applied a restricted use pesticide without having a certified applicator in direct supervision;

(16) Operated a commercial pesticide application business: (a) Without an individual licensed as a commercial pesticide applicator or (b) with a licensed commercial pesticide applicator not licensed in the classification or classifications in which the business operates; or

(17) Operated as a commercial pesticide applicator without meeting the financial responsibility requirements including not having a properly executed financial responsibility insurance certificate or surety bond form on file with the department. [2011 c 103 § 12; 1994 c 283 § 18; 1989 c 380 § 48; 1971 ex.s. c 191 § 4; 1967 c 177 § 8; 1961 c 249 § 15.]

Purpose—2011 c 103: See note following RCW 15.26.120.

17.21.170 Commercial pesticide applicator license—Amount of bond or insurance required—Notice of reduction or cancellation by surety or insurer. The following requirements apply to the amount of bond or insurance required for commercial applicators:

(1) The amount of the surety bond or liability insurance, as provided for in RCW 17.21.160, shall be not less than fifty thousand dollars for property damage and public liability insurance, each separately, and including loss or damage arising out of the actual use of any pesticide. The surety bond or liability insurance shall be maintained at not less than that sum at all times during the licensed period.

(2) The property damage portion of this requirement may be waived by the director if it can be demonstrated by the applicant that all applications performed under this license occur under confined circumstances and on property owned or leased by the applicant.

(3) The director shall be notified ten days before any reduction of insurance coverage at the request of the appli-

cant or cancellation of the surety bond or liability insurance by the surety or insurer and by the insured.

(4) The total and aggregate of the surety and insurer for all claims is limited to the face of the bond or liability insurance policy. The director may accept a liability insurance policy or surety bond in the proper sum which has a deductible clause in an amount not exceeding five thousand dollars for all applicators for the total amount of liability insurance or surety bond required by this section, but if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim the deductible clause shall not be accepted by the director unless the applicant furnishes the director with a surety bond or liability insurance which shall satisfy the amount of the deductible as to all claims that may arise in his or her application of pesticides. [2011 c 336 § 460; 1994 c 283 § 20; 1983 c 95 § 7; 1967 c 177 § 10; 1963 c 107 § 1; 1961 c 249 § 17.]

Chapter 17.24 RCW

INSECT PESTS AND PLANT DISEASES

Sections

17.24.210 Indemnity contracts for damages resulting from prevention, control, or eradication measures—Authorized—Conditions.

17.24.210 Indemnity contracts for damages resulting from prevention, control, or eradication measures—Authorized—Conditions. The director of agriculture may, on the behalf of the state of Washington, enter into indemnity contracts wherein the state of Washington agrees to repay any person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide plant pest or plant disease prevention, control, or eradication measures as provided in this chapter or any rule adopted pursuant to the provisions of this chapter, for losses and damages incurred as a result of such prevention, control, or eradication measures if all of the following conditions occur:

(1) At the time of the incident the worker is performing services as an emergency measures worker and is acting within the course of his or her duties as an emergency measures worker;

(2) At the time of the injury, loss, or damage, the organization providing emergency measures by which the worker is employed is an approved organization for providing emergency measures;

(3) The injury, loss, or damage is proximately caused by his or her service either with or without negligence as an emergency measures worker;

(4) The injury, loss, or damage is not caused by the intoxication of the worker; and

(5) The injury, loss, or damage is not due to willful misconduct or gross negligence on the part of a worker.

Where an act or omission by an emergency services provider in the course of providing emergency services injures a person or property, the provider and the state may be jointly and severally liable for the injury, if state liability is proved under existing or hereafter enacted law. [2011 c 336 § 461; 2011 c 103 § 43; 1982 c 153 § 3.]

Reviser's note: This section was amended by 2011 c 103 § 43 and by 2011 c 336 § 461, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

Chapter 17.26 RCW

CONTROL OF SPARTINA AND PURPLE LOOSESTRIFE

Sections

17.26.020 High priority for all state agencies—Definitions.

17.26.020 High priority for all state agencies—Definitions. (1) Facilitating the control of spartina and purple loosestrife is a high priority for all state agencies.

(2) The department of natural resources is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of natural resources.

(3) The department of fish and wildlife is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the department of fish and wildlife.

(4) The state parks and recreation commission is responsible for spartina and purple loosestrife control on state-owned aquatic lands managed by the state parks and recreation commission.

(5) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this chapter, RCW 90.48.020, 90.58.030, and 77.55.081:

(a) "Spartina" means *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens*.

(b) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum virgatum*.

(c) "Aquatic noxious weed" means an aquatic weed on the state noxious weed list adopted under RCW 17.10.080. [2011 c 103 § 13; 2003 c 39 § 10; 1995 c 255 § 12.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Chapter 17.28 RCW

MOSQUITO CONTROL DISTRICTS

Sections

17.28.030 Petition method—Description of boundaries—Verification of signatures—Resolution to include city.

17.28.070 Procedure to include other territory.

17.28.090 Declaration establishing and naming district—Election to form district—Establishment of district.

17.28.120 Board of trustees—Name of board—Qualification of members.

17.28.130 Board of trustees—Terms—Vacancies.

17.28.250 Interference with entry or work of district—Penalty.

17.28.258 County treasurer—Duties.

17.28.310 Annual certification of assessed valuation.

17.28.430 Dissolution—Result of election to be certified—Certificate of dissolution.

17.28.030 Petition method—Description of boundaries—Verification of signatures—Resolution to include city. Before a city can be included as a part of the proposed district its governing body shall have requested that the city be included by resolution, duly authenticated.

The petition shall set forth and describe the boundaries of the proposed district and it shall request that it be orga-

nized as a mosquito control district. Upon receipt of such a petition, the auditor of the county in which the greater area of the proposed district is located shall be charged with the responsibility of examining the same and certifying to the sufficiency of the signatures thereon. For the purpose of examining the signatures on such petitions, the auditor shall be permitted access to the voters' registration books of each city and county located in the proposed district and may appoint the respective county auditors and city clerks thereof as his or her deputies. No person may withdraw his or her name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the board of commissioners of the county in which the greater area of the proposed district is located, together with his or her certificate as to the sufficiency thereof. [2011 c 336 § 462; 1957 c 153 § 3.]

17.28.070 Procedure to include other territory. If the county commissioners deem it proper to include any territory not proposed for inclusion within the proposed boundaries, they shall first cause notice of intention to do so to be mailed to each owner of land in the territory whose name appears as owner on the last completed assessment roll of the county in which the territory lies, addressed to the owner at his or her address given on the assessment roll, or if no address is given, to his or her last known address; or if it is not known, at the county seat of the county in which his or her land lies. The notice shall describe the territory and shall fix a time, not less than two weeks from the date of mailing, when all persons interested may appear before the county commissioners and be heard.

The boundaries of a district lying in a city shall not be altered unless the governing board of the city, by resolution, consents to the alteration. [2011 c 336 § 463; 1957 c 153 § 7.]

17.28.090 Declaration establishing and naming district—Election to form district—Establishment of district. If, from the testimony given before the county commissioners, it appears to that board that the public necessity or welfare requires the formation of the district, it shall, by an order entered on its minutes, declare that to be its finding, and shall further declare and order that the territory within the boundaries so fixed and determined be organized as a district, under an appropriate name to be selected by the county commissioners, subject to approval of the voters of the district as hereinafter provided. The name shall contain the words "mosquito control district."

At the time of the declaration establishing and naming the district, the county commissioners shall by resolution call a special election to be held not less than thirty days and not more than sixty days from the date thereof, and shall cause to be published a notice of such election at least once a week for three consecutive weeks in a newspaper of general circulation in the county, setting forth the hours during which the polls will be open, the boundaries of the proposed district as finally adopted, and the object of the election. If any portion of the proposed district lies in another county, a notice of such election shall likewise be published in that county.

The election on the formation of the mosquito control district shall be conducted by the auditor of the county in which the greater area of the proposed district is located in accordance with the general election laws of the state and the results thereof shall be canvassed by that county's canvassing board. For the purpose of conducting an election under this section, the auditor of the county in which the greater area of the proposed district is located may appoint the auditor of any county or the city clerk of any city lying wholly or partially within the proposed district as his or her deputies. No person shall be entitled to vote at such election unless he or she is a qualified voter under the laws of the state in effect at the time of such election and has resided within the mosquito control district for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"Shall a mosquito control district be established for the area described in a resolution of the board of commissioners of county adopted on the day of, 19 . . . ?

YES
NO

If a majority of the persons voting on the proposition shall vote in favor thereof, the mosquito control district shall thereupon be established and the county commissioners of the county in which the greater area of the district is situated shall immediately file for record in the office of the county auditor of each county in which any portion of the land embraced in the district is situated, and shall also forward to the county commissioners of each of the other counties, if any, in which any portion of the district is situated, and also shall file with the secretary of state, a certified copy of the order of the county commissioners. From and after the date of the filing of the certified copy with the secretary of state, the district named therein is organized as a district, with all the rights, privileges, and powers set forth in this chapter, or necessarily incident thereto.

If a majority of the persons voting on the proposition shall vote in favor thereof, all expenses of the election shall be paid by the mosquito control district when organized. If the proposition fails to receive a majority of votes in favor, the expenses of the election shall be borne by the respective counties in which the district is located in proportion to the number of votes cast in said counties. [2011 c 336 § 464; 1957 c 153 § 9.]

17.28.120 Board of trustees—Name of board—Qualification of members. The district board shall be called "The board of trustees of mosquito control district."

Each member of the board appointed by the governing body of a city shall be an elector of the city from which he or she is appointed and a resident of that portion of the city which is in the district.

Each member appointed from a county or portion of a county shall be an elector of the county and a resident of that portion of the county which is in the district.

Each member appointed at large shall be an elector of the district. [2011 c 336 § 465; 1957 c 153 § 12.]

17.28.130 Board of trustees—Terms—Vacancies.

The members of the first board in any district shall classify themselves by lot at their first meeting so that:

(1) If the total membership is an even number, the terms of one-half the members will expire at the end of one year, and the terms of the remainder at the end of two years, from the second day of the calendar year next succeeding their appointment.

(2) If the total membership is an odd number, the terms of a bare majority of the members will expire at the end of one year, and the terms of the remainder at the end of two years, from the second day of the calendar year next succeeding their appointment.

The term of each subsequent member is two years from and after the expiration of the term of his or her predecessor.

In event of the resignation, death, or disability of any member, his or her successor shall be appointed by the governing body which appointed him or her. [2011 c 336 § 466; 1957 c 153 § 13.]

17.28.250 Interference with entry or work of district—Penalty. Any person who obstructs, hinders, or interferes with the entry upon any land within the district of any officer or employee of the district in the performance of his or her duty, and any person who obstructs, interferes with, molests, or damages any work performed by the district, is guilty of a misdemeanor. [2011 c 336 § 467; 1957 c 153 § 25.]

17.28.258 County treasurer—Duties. The county treasurer shall collect all mosquito control district assessments, and the duties and responsibilities herein imposed upon him or her shall be among the duties and responsibilities of his or her office for which his or her bond is given as county treasurer. The collection and disposition of revenue from such assessments and the depositary thereof shall be the same as for tax revenues of such districts as provided in RCW 17.28.270. [2011 c 336 § 468; 1959 c 64 § 10.]

17.28.310 Annual certification of assessed valuation. It shall be the duty of the assessor of each county lying wholly or partially within the district to certify annually to the board the aggregate assessed valuation of all taxable property in his or her county situated in any mosquito control district as the same appears from the last assessment roll of his or her county. [2011 c 336 § 469; 1957 c 153 § 31.]

17.28.430 Dissolution—Result of election to be certified—Certificate of dissolution. Should two-thirds or more of the votes at the election favor dissolution the district board shall certify that fact to the secretary of state. Upon receipt of such certification the secretary of state shall issue his or her certificate reciting that the district (naming it) has been dissolved, and shall transmit to and file a copy with the county clerk of each county in which any portion of the district is situated.

After the date of the certificate of the secretary of state, the district is dissolved. [2011 c 336 § 470; 1957 c 153 § 43.]

Chapter 17.34 RCW**PEST CONTROL COMPACT**

Sections

17.34.040	Compact administrator.
17.34.050	Requests or applications for assistance from insurance fund.
17.34.060	Agency incurring expenses to be credited with payments to this state.

17.34.040 Compact administrator. The compact administrator for this state shall be the director of agriculture. The duties of the compact administrator shall be deemed a regular part of his or her office. [2011 c 336 § 471; 1969 ex.s. c 130 § 4.]

17.34.050 Requests or applications for assistance from insurance fund. Within the meaning of Article VI(B) or VIII(A), a request or application for assistance from the insurance fund may be made by the director of agriculture whenever in his or her judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request. [2011 c 336 § 472; 1969 ex.s. c 130 § 5.]

17.34.060 Agency incurring expenses to be credited with payments to this state. The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the compact shall have credited to his or her account in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof. [2011 c 336 § 473; 1969 ex.s. c 130 § 6.]

Title 18**BUSINESSES AND PROFESSIONS**

Chapters

18.08	Architects.
18.11	Auctioneers.
18.16	Cosmetologists, barbers, and manicurists.
18.19	Counselors.
18.20	Boarding homes.
18.25	Chiropractic.
18.27	Registration of contractors.
18.28	Debt adjusting.
18.30	Denturists.
18.32	Dentistry.
18.34	Dispensing opticians.
18.36A	Naturopathy.
18.39	Embalmers—Funeral directors.
18.43	Engineers and land surveyors.
18.44	Escrow agent registration act.
18.51	Nursing homes.
18.52	Nursing home administrators.
18.54	Optometry board.
18.55	Ocularists.
18.57A	Osteopathic physicians' assistants.
18.59	Occupational therapy.
18.64	Pharmacists.
18.64A	Pharmacy assistants.
18.71	Physicians.
18.71A	Physician assistants.

- 18.73 Emergency medical care and transportation services.
- 18.74 Physical therapy.
- 18.79 Nursing care.
- 18.84 Radiologic technologists.
- 18.85 Real estate brokers and managing brokers.
- 18.88A Nursing assistants.
- 18.88B Long-term care workers.
- 18.89 Respiratory care practitioners.
- 18.92 Veterinary medicine, surgery, and dentistry.
- 18.96 Landscape architects.
- 18.100 Professional service corporations.
- 18.104 Water well construction.
- 18.106 Plumbers.
- 18.108 Massage practitioners.
- 18.130 Regulation of health professions—Uniform disciplinary act.
- 18.135 Health care assistants.
- 18.140 Certified real estate appraiser act.
- 18.145 Court reporting practice act.
- 18.160 Fire sprinkler system contractors.
- 18.165 Private investigators.
- 18.170 Security guards.
- 18.185 Bail bond agents.
- 18.210 On-site wastewater treatment systems—Designer licensing.
- 18.215 Surgical technologists.
- 18.220 Geologists.
- 18.260 Dental professionals.
- 18.280 Home inspectors.
- 18.300 Body art, body piercing, and tattooing.
- 18.320 Social workers.
- 18.330 Elder and vulnerable adult referral agency act.

Chapter 18.08 RCW ARCHITECTS

Sections

- 18.08.500 Military training or experience.

18.08.500 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 1.]

Chapter 18.11 RCW AUCTIONEERS

Sections

- 18.11.290 Military training or experience.

18.11.290 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 2.]

Chapter 18.16 RCW COSMETOLOGISTS, BARBERS, AND MANICURISTS

Sections

- 18.16.300 Military training or experience.

18.16.300 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 3.]

Chapter 18.19 RCW COUNSELORS

Sections

- 18.19.020 Definitions.

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

(1) "Agency" means (a) an agency or facility operated, licensed, or certified by the state of Washington; (b) a federally recognized Indian tribe located within the state; or (c) a county.

(2) "Agency affiliated counselor" means a person registered under this chapter who is engaged in counseling and employed by an agency. "Agency affiliated counselor" includes juvenile probation counselors who are employees of the juvenile court under RCW 13.04.035 and 13.04.040 and juvenile court employees providing functional family therapy, aggression replacement training, or other evidence-based programs approved by the juvenile rehabilitation administration of the department of social and health services.

(3) "Certified adviser" means a person certified under this chapter who is engaged in private practice counseling to the extent authorized in RCW 18.19.200.

(4) "Certified counselor" means a person certified under this chapter who is engaged in private practice counseling to the extent authorized in RCW 18.19.200.

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

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

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

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

(9) "Hypnotherapist" means a person registered under this chapter who is practicing hypnosis as a modality.

(10) "Private practice counseling" means the practice of counseling by a certified counselor or certified adviser as specified in RCW 18.19.200.

(11) "Psychotherapy" means the practice of counseling using diagnosis of mental disorders according to the fourth edition of the diagnostic and statistical manual of mental disorders, published in 1994, and the development of treatment plans for counseling based on diagnosis of mental disorders in accordance with established practice standards.

(12) "Secretary" means the secretary of the department or the secretary's designee. [2011 c 86 § 1; 2010 1st sp.s. c 20 § 1; 2008 c 135 § 1; 2001 c 251 § 18; 1991 c 3 § 19; 1987 c 512 § 3.]

Effective date—2010 1st sp.s. c 20: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2010]." [2010 1st sp.s. c 20 § 2.]

Effective date—2008 c 135 §§ 1, 2, 7-9, and 11-19: "Sections 1, 2, 7 through 9, and 11 through 19 of this act take effect July 1, 2009." [2008 c 135 § 21.]

Severability—2001 c 251: See RCW 18.225.900.

Chapter 18.20 RCW BOARDING HOMES

Sections

18.20.020	Definitions.
18.20.030	License required.
18.20.050	Licenses—Issuance—Renewal—Provisional licenses—Fees—Display—Surrender, relinquishment—Change in licensee—Refusal of renewal, when—Copy of decision.
18.20.125	Inspections—Enforcement remedies—Screening—Limitations on unsupervised access to vulnerable adults.
18.20.180	Resident rights.
18.20.305	Disclosure to nonresidents.

18.20.020 Definitions. As used in this chapter:

(1) "Adult day services" means care and services provided to a nonresident individual by the boarding home on the boarding home premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

(2) "Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

(3) "Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with chapter 142, Laws of 2004, to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" shall not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in con-

tinuing care retirement communities, or other similar living situations including those subsidized by the department of housing and urban development.

(4) "Department" means the state department of social and health services.

(5) "Domiciliary care" means: Assistance with activities of daily living provided by the boarding home either directly or indirectly; or health support services, if provided directly or indirectly by the boarding home; or intermittent nursing services, if provided directly or indirectly by the boarding home.

(6) "General responsibility for the safety and well-being of the resident" means the provision of the following: Prescribed general low sodium diets; prescribed general diabetic diets; prescribed mechanical soft foods; emergency assistance; monitoring of the resident; arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary; coordinating health care services with outside health care providers consistent with RCW 18.20.380; assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices; observation of the resident for changes in overall functioning; blood pressure checks as scheduled; responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or medication assistance as permitted under RCW 69.41.085 and as defined in RCW 69.41.010.

(7) "Legal representative" means a person or persons identified in RCW 7.70.065 who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident.

(8) "Nonresident individual" means a person who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in an unlicensed room located within a boarding home. Nothing in this chapter prohibits nonresidents from receiving one or more of the services listed in RCW 18.20.030(5) or requires licensure as a boarding home when one or more of the services listed in RCW 18.20.030(5) are provided to nonresidents. A nonresident individual may not receive domiciliary care, as defined in this chapter, directly or indirectly by the boarding home and may not receive the items and services listed in subsection (6) of this section, except during the time the person is receiving adult day services as defined in this section.

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

(10) "Resident" means an individual who is not related by blood or marriage to the operator of the boarding home, and by reason of age or disability, chooses to reside in the boarding home and receives basic services and one or more of the services listed under general responsibility for the safety and well-being of the resident and may receive domiciliary care or respite care provided directly or indirectly by the boarding home and shall be permitted to receive hospice care through an outside service provider when arranged by

the resident or the resident's legal representative under RCW 18.20.380.

(11) "Resident applicant" means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

(12) "Resident's representative" means a person designated voluntarily by a competent resident, in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home, if there is no legal representative. The resident's competence shall be determined using the criteria in RCW 11.88.010(1)(e). The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative shall not have authority to act on behalf of the resident once the resident is no longer competent.

(13) "Secretary" means the secretary of social and health services. [2011 c 366 § 2; 2006 c 242 § 1; 2004 c 142 § 1; 2003 c 231 § 2; 2000 c 47 § 1; 1998 c 272 § 14; 1991 c 3 § 34; 1989 c 329 § 1; 1985 c 213 § 4; 1979 c 141 § 25; 1957 c 253 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Conflict with federal requirements—2011 c 366: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2011 c 366 § 9.]

Findings—Purpose—2011 c 366: "The legislature has a long history of supporting seniors where they live whether it is at home or in a licensed care facility. It is widely recognized that the consumer of senior services and long-term care of tomorrow will have different demands and expectations for the type and manner of supportive and health care services that they receive. Cost efficiencies must and can be achieved within the health care system. Through the use of care coaches, technology-supported health and wellness programs, and by allowing greater flexibility for the specialization and use of nursing facility beds, costly hospitalizations and rehospitalizations can be reduced and the entry to licensed care settings can be delayed." [2011 c 366 § 1.]

Severability—2006 c 242: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 242 § 4.]

Effectivity dates—2004 c 142: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004], except that sections 1 through 10 and 12 of this act take effect September 1, 2004." [2004 c 142 § 18.]

Findings—2003 c 231: "The legislature finds and declares that, in keeping with the traditional concept of the dignity of the individual in our democratic society, the older citizens of this state and persons with disabilities are entitled to live in comfort, honor, and dignity in a manner that maximizes freedom and independence.

The legislature further finds that licensed boarding homes are an essential component of home and community-based services, and that the noninstitutional nature of this care setting must be preserved and protected by ensuring a regulatory structure that focuses on the actual care and services provided to residents, consumer satisfaction, and continuous quality improvement.

The legislature also finds that residents and consumers of services in

licensed boarding homes should be encouraged to exercise maximum independence, and the legislature declares that the state's rules for licensed boarding homes must also be designed to encourage individual dignity, autonomy, and choice.

The legislature further finds that consumers should be afforded access to affordable long-term care services in licensed boarding homes, and believes that care delivery must remain responsive to consumer preferences. Residents and consumers in licensed boarding homes should be afforded the right to self-direct care, and this right should be reflected in the rules governing licensed boarding homes." [2003 c 231 § 1.]

Effective date—2003 c 231: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 231 § 12.]

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

Additional notes found at www.leg.wa.gov

18.20.030 License required. (1) After January 1, 1958, no person shall operate or maintain a boarding home as defined in this chapter within this state without a license under this chapter.

(2) A boarding home license is not required for the housing, or services, that are customarily provided under landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW, or when housing nonresident individuals who chose to participate in programs or services under subsection (5) of this section, when offered by the boarding home licensee or the licensee's contractor. This subsection does not prohibit the licensee from furnishing written information concerning available community resources to the nonresident individual or the individual's family members or legal representatives. The licensee may not require the use of any particular service provider.

(3) Residents receiving domiciliary care, directly or indirectly by the boarding home, are not considered nonresident individuals for the purposes of this section.

(4) A boarding home license is required when any person other than an outside service provider, under RCW 18.20.380, or family member:

(a) Assumes general responsibility for the safety and well-being of a resident;

(b) Provides assistance with activities of daily living, either directly or indirectly;

(c) Provides health support services, either directly or indirectly; or

(d) Provides intermittent nursing services, either directly or indirectly.

(5) A boarding home license is not required for one or more of the following services that may, upon the request of the nonresident, be provided to a nonresident individual: (a) Emergency assistance provided on an intermittent or nonroutine basis; (b) systems, including technology-based monitoring devices, employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services; (c) scheduled and nonscheduled blood pressure checks; (d) nursing assessment services to determine whether referral to an outside health care provider is recommended; (e) making and reminding the nonresident of health care appointments; (f) preadmission assessment for the purposes of transitioning to a licensed care setting; (g) medication assistance which may include reminding or coaching the non-

resident, opening the nonresident's medication container, using an enabler, and handing prefilled insulin syringes to the nonresident; (h) falls risk assessment; (i) nutrition management and education services; (j) dental services; (k) wellness programs; (l) prefiling insulin syringes when performed by a nurse licensed under chapter 18.79 RCW; or (m) services customarily provided under landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW. [2011 c 366 § 3; 2004 c 142 § 17; 2003 c 231 § 3; 1957 c 253 § 3.]

Findings—Purpose—Conflict with federal requirements—2011 c 366: See notes following RCW 18.20.020.

Effective dates—2004 c 142: See note following RCW 18.20.020.

Findings—Effective date—2003 c 231: See notes following RCW 18.20.020.

18.20.050 Licenses—Issuance—Renewal—Provisional licenses—Fees—Display—Surrender, relinquishment—Change in licensee—Refusal of renewal, when—Copy of decision. (1)(a) Upon receipt of an application for license, if the applicant and the boarding home's facilities meet the requirements established under this chapter, the department may issue a license. If there is a failure to comply with the provisions of this chapter or the rules adopted under this chapter, the department may in its discretion issue a provisional license to an applicant for a license or for the renewal of a license. A provisional license permits the operation of the boarding home for a period to be determined by the department, but not to exceed twelve months and is not subject to renewal. The department may also place conditions on the license under RCW 18.20.190.

(b) At the time of the application for or renewal of a license or provisional license, the licensee shall pay a license fee. Beginning July 1, 2011, and thereafter, the per bed license fee must be established in the omnibus appropriations act and any amendment or additions made to that act. The license fees established in the omnibus appropriations act and any amendment or additions made to that act may not exceed the department's annual licensing and oversight activity costs and must include the department's cost of paying providers for the amount of the license fee attributed to medicaid clients.

(c) A license issued under this chapter may not exceed twelve months in duration and expires on a date set by the department. A boarding home license must be issued only to the person that applied for the license. All applications for renewal of a license shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

(2) A licensee who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of a boarding home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the licensee, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the licensee

relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

(3) The department shall establish, by rule, the circumstances requiring a change in licensee, which include, but are not limited to, a change in ownership or control of the boarding home or licensee, a change in the licensee's form of legal organization, such as from sole proprietorship to partnership or corporation, and a dissolution or merger of the licensed entity with another legal organization. The new licensee is subject to the provisions of this chapter, the rules adopted under this chapter, and other applicable law. In order to ensure that the safety of residents is not compromised by a change in licensee, the new licensee is responsible for correction of all violations that may exist at the time of the new license.

(4) The department may deny, suspend, modify, revoke, or refuse to renew a license when the department finds that the applicant or licensee or any partner, officer, director, managerial employee, or majority owner of the applicant or licensee:

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

(b) Knowingly or with reason to know made a false statement of a material fact (i) in an application for license or any data attached to the application, or (ii) in any matter under investigation by the department; or

(c) Refused to allow representatives or agents of the department to inspect (i) the books, records, and files required to be maintained, or (ii) any portion of the premises of the boarding home; or

(d) Willfully prevented, interfered with, or attempted to impede in any way (i) the work of any authorized representative of the department, or (ii) the lawful enforcement of any provision of this chapter; or

(e) Has a history of significant noncompliance with federal or state regulations in providing care or services to vulnerable adults or children. In deciding whether to deny, suspend, modify, revoke, or refuse to renew a license under this section, the factors the department considers shall include the gravity and frequency of the noncompliance.

(5) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial. [2011 1st sp.s. c 3 § 402; 2004 c 140 § 1; 2003 c 231 § 4; 2001 c 193 § 10; 2000 c 47 § 3; 1987 c 75 § 3; 1982 c 201 § 4; 1971 ex.s. c 247 § 1; 1957 c 253 § 5.]

Effective date—2011 1st sp.s. c 3 §§ 401-403: See note following RCW 18.51.050.

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Findings—Effective date—2003 c 231: See notes following RCW 18.20.020.

Additional notes found at www.leg.wa.gov

18.20.125 Inspections—Enforcement remedies—Screening—Limitations on unsupervised access to vul-

nerable adults. (1) Inspections must be outcome based and responsive to resident complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to facilities, residents, and other interested parties. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, and advocates in addition to interviewing appropriate staff.

(2) Prompt and specific enforcement remedies shall also be implemented without delay, consistent with RCW 18.20.190, for facilities found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(3)(a) To the extent funding is available, the licensee, administrator, and their staff should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable adults. Employees may be provisionally hired pending the results of the background check if they have been given three positive references.

(b) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 1, 2014, are subject to background checks under RCW 74.39A.055.

(4) No licensee, administrator, or staff, or prospective licensee, administrator, or staff, with a stipulated finding of fact, conclusion of law, and agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into the state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults. [2011 1st sp.s. c 31 § 15; 2009 c 580 § 3; 2004 c 140 § 4; 2003 c 231 § 5; 2001 c 85 § 2.]

Findings—Effective date—2003 c 231: See notes following RCW 18.20.020.

Effective date—2001 c 85: See note following RCW 18.20.115.

18.20.180 Resident rights. RCW 70.129.005 through 70.129.030, 70.129.040, and 70.129.050 through 70.129.170 apply to this chapter and persons regulated under this chapter. [2011 1st sp.s. c 3 § 303; 1994 c 214 § 21.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

18.20.305 Disclosure to nonresidents. (1) A boarding home must provide each nonresident a disclosure statement upon admission and at the time that additional services are requested by a nonresident.

(2) The disclosure statement shall notify the nonresident that:

(a) The resident rights of chapter 70.129 RCW do not apply to nonresidents;

(b) Licensing requirements for boarding homes under this chapter do not apply to nonresident units; and

(c) The jurisdiction of the long-term care ombudsman does not apply to nonresidents and nonresident units. [2011 c 366 § 4.]

Findings—Purpose—Conflict with federal requirements—2011 c 366: See notes following RCW 18.20.020.

Chapter 18.25 RCW CHIROPRACTIC

Sections

18.25.210 Pilot project—Commission—Authority over budget. (*Effective January 1, 2012.*)

18.25.210 Pilot project—Commission—Authority over budget. (*Effective January 1, 2012.*) (1) The commission may conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. If the commission intends to conduct a pilot project, it must provide a notice in writing to the secretary by June 1, 2008. If the commission chooses to conduct a pilot project, the pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to chiropractors licensed under this chapter; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties,

then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under RCW 18.71.430, 18.79.390, and 18.32.765, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement. [2011 c 60 § 5; 2008 c 134 § 31.]

Effective date—2011 c 60: See RCW 42.17A.919.

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Chapter 18.27 RCW

REGISTRATION OF CONTRACTORS

Sections

18.27.060	Certificate of registration—Issuance, duration, renewal—Suspension—Single registration/licensing document for those qualifying as both general and electrical contractor.
18.27.080	Registration prerequisite to suit.
18.27.100	Business practices—Advertising—Penalty.
18.27.230	Notice of infraction—Service.

18.27.250	Notice—Filing—Administrative hearing—Appeal.
18.27.270	Notice—Response—Failure to respond, appear, pay penalties, or register.
18.27.370	Notices of infraction—Filing—Warrant—Notice and order, withhold property—Service—Civil penalties.

18.27.060 Certificate of registration—Issuance, duration, renewal—Suspension—Single registration/licensing document for those qualifying as both general and electrical contractor. (1) A certificate of registration shall be valid for two years and shall be renewed on or before the expiration date. The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) If the department approves an application, it shall issue a certificate of registration to the applicant.

(3) If a contractor's surety bond or other security has an unsatisfied judgment against it or is canceled, or if the contractor's insurance policy is canceled, the contractor's registration shall be automatically suspended on the effective date of the impairment or cancellation. The department shall mail notice of the suspension to the contractor's address on the certificate of registration within two days after suspension using a method by which the mailing can be tracked or the delivery can be confirmed.

(4) Renewal of registration is valid on the date the department receives the required fee and proof of bond and liability insurance, if sent by certified mail or other means requiring proof of delivery. The receipt or proof of delivery shall serve as the contractor's proof of renewed registration until he or she receives verification from the department.

(5) The department shall immediately suspend the certificate of registration of a contractor who has been certified by the department of social and health services as a person who is not in compliance with a support order or a visitation order as provided in RCW 74.20A.320. The certificate of registration shall not be reissued or renewed unless the person provides to the department a release from the department of social and health services stating that he or she is in compliance with the order and the person has continued to meet all other requirements for certification during the suspension.

(6) For a contractor who employs plumbers, as described in RCW 18.106.010(10)(c), and is also required to be licensed as an electrical contractor as required in RCW 19.28.041, while doing pump and irrigation or domestic pump work described in rule as authorized by RCW 19.28.251, the department shall establish a single registration/licensing document for those who qualify for both general contractor registration as defined by this chapter and an electrical contractor license as defined by chapter 19.28 RCW. [2011 c 301 § 1; 2006 c 185 § 14; 2001 c 159 § 5. Prior: 1997 c 314 § 6; 1997 c 58 § 817; 1983 1st ex.s. c 2 § 19; 1977 ex.s. c 61 § 1; 1963 c 77 § 6.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

18.27.080 Registration prerequisite to suit. No person engaged in the business or acting in the capacity of a contractor may bring or maintain any action in any court of this state for the collection of compensation for the performance of any work or for breach of any contract for which registra-

tion is required under this chapter without alleging and proving that he or she was a duly registered contractor and held a current and valid certificate of registration at the time he or she contracted for the performance of such work or entered into such contract. For the purposes of this section, the court shall not find a contractor in substantial compliance with the registration requirements of this chapter unless: (1) The department has on file the information required by RCW 18.27.030; (2) the contractor has at all times had in force a current bond or other security as required by RCW 18.27.040; and (3) the contractor has at all times had in force current insurance as required by RCW 18.27.050. In determining under this section whether a contractor is in substantial compliance with the registration requirements of this chapter, the court shall take into consideration the length of time during which the contractor did not hold a valid certificate of registration. [2011 c 336 § 474; 2007 c 436 § 5; 1988 c 285 § 2; 1972 ex.s. c 118 § 3; 1963 c 77 § 8.]

18.27.100 Business practices—Advertising—Penalty. (1) Except as provided in RCW 18.27.065 for partnerships and joint ventures, no person who has registered under one name as provided in this chapter shall engage in the business, or act in the capacity, of a contractor under any other name unless such name also is registered under this chapter.

(2) All advertising and all contracts, correspondence, cards, signs, posters, papers, and documents which show a contractor's name or address shall show the contractor's name or address as registered under this chapter.

(3)(a) All advertising that shows the contractor's name or address shall show the contractor's current registration number. The registration number may be omitted in an alphabetized listing of registered contractors stating only the name, address, and telephone number: PROVIDED, That signs on motor vehicles subject to RCW 46.16A.030 and on-premise signs shall not constitute advertising as provided in this section. All materials used to directly solicit business from retail customers who are not businesses shall show the contractor's current registration number. A contractor shall not use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required. Advertising by airwave transmission shall not be subject to this subsection (3)(a).

(b) The director may issue a subpoena to any person or entity selling any advertising subject to this section for the name, address, and telephone number provided to the seller of the advertising by the purchaser of the advertising. The subpoena must have enclosed a stamped, self-addressed envelope and blank form to be filled out by the seller of the advertising. If the seller of the advertising has the information on file, the seller shall, within a reasonable time, return the completed form to the department. The subpoena must be issued no more than two days after the expiration of the issue or publication containing the advertising or after the broadcast of the advertising. The good-faith compliance by a seller of advertising with a written request of the department for information concerning the purchaser of advertising shall constitute a complete defense to any civil or criminal action brought against the seller of advertising arising from such compliance. Advertising by airwave or electronic transmission is subject to this subsection (3)(b).

(4) No contractor shall advertise that he or she is bonded and insured because of the bond required to be filed and sufficiency of insurance as provided in this chapter.

(5) A contractor shall not falsify a registration number and use it, or use an expired registration number, in connection with any solicitation or identification as a contractor. All individual contractors and all partners, associates, agents, salespersons, solicitors, officers, and employees of contractors shall use their true names and addresses at all times while engaged in the business or capacity of a contractor or activities related thereto.

(6) Any advertising by a person, firm, or corporation soliciting work as a contractor when that person, firm, or corporation is not registered pursuant to this chapter is a violation of this chapter.

(7) An applicant or registrant who falsifies information on an application for registration commits a violation under this section.

(8)(a) The finding of a violation of this section by the director at a hearing held in accordance with the Administrative Procedure Act, chapter 34.05 RCW, shall subject the person committing the violation to a penalty of not more than ten thousand dollars as determined by the director.

(b) Penalties under this section shall not apply to a violation determined to be an inadvertent error. [2011 c 336 § 475; 2011 c 171 § 4; 2008 c 120 § 2; 2001 c 159 § 8; 1997 c 314 § 9; 1996 c 147 § 2; 1993 c 454 § 3; 1990 c 46 § 1; 1987 c 362 § 3; 1980 c 68 § 1; 1979 ex.s. c 116 § 1; 1963 c 77 § 10.]

Reviser's note: This section was amended by 2011 c 171 § 4 and by 2011 c 336 § 475, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

Finding—1993 c 454: See note following RCW 18.27.010.

Additional notes found at www.leg.wa.gov

18.27.230 Notice of infraction—Service. The department may issue a notice of infraction if the department reasonably believes that the contractor has committed an infraction under this chapter. A notice of infraction issued under this section shall be personally served on the contractor named in the notice by the department's compliance inspectors or service can be made using a method by which the mailing can be tracked or the delivery can be confirmed directed to the contractor named in the notice of infraction at the contractor's last known address of record. If the contractor named in the notice of infraction is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice of infraction is personally served upon an employee of a firm or corporation, the department shall send a copy of the notice using a method by which the mailing can be tracked or the delivery can be confirmed to the contractor if the department is able to obtain the contractor's address. [2011 c 301 § 2; 2007 c 436 § 12; 1997 c 314 § 15; 1993 c 454 § 9; 1986 c 197 § 3; 1983 1st ex.s. c 2 § 3.]

Finding—1993 c 454: See note following RCW 18.27.010.

Additional notes found at www.leg.wa.gov

18.27.250 Notice—Filing—Administrative hearing—Appeal. A violation designated as an infraction under this chapter shall be heard and determined by an administrative law judge of the office of administrative hearings. If a party desires to contest the notice of infraction, the party shall file a notice of appeal with the department specifying the grounds of the appeal within thirty days of service of the infraction in a manner provided by this chapter. The appeal must be accompanied by a certified check for two hundred dollars, which shall be returned to the assessed party if the decision of the department is not sustained following the final decision in the appeal. If the final decision sustains the decision of the department, the department must apply the two hundred dollars to the payment of the expenses of the appeal, including costs charged by the office of administrative hearings. The administrative law judge shall conduct hearings in these cases at locations in the county where the infraction occurred. [2011 c 15 § 1; 2007 c 436 § 14; 1986 c 197 § 5; 1983 1st ex.s. c 2 § 4.]

Additional notes found at www.leg.wa.gov

18.27.270 Notice—Response—Failure to respond, appear, pay penalties, or register. (1) A contractor who is issued a notice of infraction shall respond within thirty days of the date of issuance of the notice of infraction.

(2) If the contractor named in the notice of infraction does not elect to contest the notice of infraction, then the contractor shall pay to the department, by check or money order, the amount of the penalty prescribed for the infraction. When a response which does not contest the notice of infraction is received by the department with the appropriate penalty, the department shall make the appropriate entry in its records.

(3) If the contractor named in the notice of infraction elects to contest the notice of infraction, the contractor shall respond by filing an appeal to the department in the manner specified in RCW 18.27.250.

(4) If any contractor issued a notice of infraction fails to respond within the prescribed response period, the contractor shall be guilty of a misdemeanor and prosecuted in the county where the infraction occurred.

(5) After final determination by an administrative law judge that an infraction has been committed, a contractor who fails to pay a monetary penalty within thirty days, that is not waived pursuant to RCW 18.27.340(2), and who fails to file an appeal pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.

(6) A contractor who fails to pay a monetary penalty within thirty days after exhausting appellate remedies pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.

(7) If a contractor who is issued a notice of infraction is a contractor who has failed to register as a contractor under this chapter, the contractor is subject to a monetary penalty per infraction as provided in the schedule of penalties established by the department, and each day the person works without becoming registered is a separate infraction. [2011 c 15 § 2; 2007 c 436 § 15; 2000 c 171 § 9; 1997 c 314 § 16; 1986 c 197 § 6; 1983 1st ex.s. c 2 § 7.]

Additional notes found at www.leg.wa.gov

18.27.370 Notices of infraction—Filing—Warrant—Notice and order, withhold property—Service—Civil penalties. (1) A notice of infraction issued under this chapter constitutes a notice of assessment for purposes of this section.

(2) A notice of infraction becomes final thirty days from the date it is served upon the contractor unless a timely appeal of the infraction is received as provided in RCW 18.27.270.

(3) When a notice of infraction becomes final, the director or the director's designee may file with the clerk of any county within the state, a warrant in the amount of the notice of infraction, plus interest, penalties, and a filing fee of twenty dollars. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the contractor mentioned in the warrant, the amount of payment, penalty, fine due on it, or filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed shall become a lien upon the title to, and interest in, all real and personal property of the contractor against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of the clerk. The sheriff shall proceed upon the warrant in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in a court of competent jurisdiction. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee which will be added to the amount of the warrant. A copy of the warrant shall be mailed to the contractor within three days of filing with the clerk.

(4) The director or the director's designee may issue to any person, firm, corporation, other entity, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of the person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is or will become due, owing, or belonging to a contractor upon whom a notice of infraction has been served by the department for payments, penalties, or fines due to the department. The effect of a notice and order is continuous from the date the notice and order is first made until the liability out of which the notice and order arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order when the liability out of which the notice and order arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order was made that the notice and order has been released.

The notice and order to withhold and deliver must be served by the sheriff of the county or by the sheriff's deputy, using a method by which the mailing can be tracked or the delivery can be confirmed, or by an authorized representative of the director. A person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclu-

sive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order. Upon service of the notice and order, if the party served possesses any property that may be subject to the claim of the department, the party shall promptly deliver the property to the director or the director's authorized representative. The director shall hold the property in trust for application on the contractor's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review. In the alternative, the party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. If a party served and named in the notice fails to answer the notice within the time prescribed in this section, the court may render judgment by default against the party for the full amount claimed by the director in the notice, together with costs. If a notice and order to withhold and deliver wages is served upon a contractor upon whom a notice of infraction has been served, the contractor may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner is entitled.

(5) In addition to the procedure for collection of a payment, penalty, or fine due to the department as set forth in this section, the department may recover civil penalties imposed under this chapter in a civil action in the name of the department brought in a court of competent jurisdiction of the county where the violation is alleged to have occurred. [2011 c 301 § 3; 2011 c 15 § 3; 2001 c 159 § 6.]

Reviser's note: This section was amended by 2011 c 15 § 3 and by 2011 c 301 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Chapter 18.28 RCW DEBT ADJUSTING

Sections

18.28.210 Violations—Assurance of discontinuance—Effect.

18.28.210 Violations—Assurance of discontinuance—Effect. The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter in the enforcement thereof from any person engaging in or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in the alternative, in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing any injunction as provided for in RCW 18.28.200: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided therein, the attorney general may not accept an assurance of discontinuance without the consent of said prosecuting attorney. [2011 c 336 § 476; 1967 c 201 § 21.]

[2011 RCW Supp—page 294]

Chapter 18.30 RCW DENTURISTS

Sections

18.30.095 Licensing requirements—Military training or experience.

18.30.095 Licensing requirements—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of the state. [2011 c 32 § 1.]

Chapter 18.32 RCW DENTISTRY

Sections

18.32.020 Practice of dentistry defined.
18.32.735 Unlawful practice—Hygienists—Penalty.
18.32.765 Pilot project—Commission—Authority over budget. (*Effective January 1, 2012.*)

18.32.020 Practice of dentistry defined. A person practices dentistry, within the meaning of this chapter, who (1) represents himself or herself as being able to diagnose, treat, remove stains and concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw, or (2) offers or undertakes by any means or methods to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or take impressions of the teeth or jaw, or (3) owns, maintains, or operates an office for the practice of dentistry, or (4) engages in any of the practices included in the curricula of recognized and approved dental schools or colleges, or (5) professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

The fact that a person uses any dental degree, or designation, or any card, device, directory, poster, sign, or other media whereby he or she represents himself or herself to be a dentist, shall be prima facie evidence that such person is engaged in the practice of dentistry.

X-ray diagnosis as to the method of dental practice in which the diagnosis and examination is made of the normal and abnormal structures, parts, or functions of the human teeth, the alveolar process, maxilla, mandible or soft tissues adjacent thereto, is hereby declared to be the practice of dentistry. Any person other than a regularly licensed physician or surgeon who makes any diagnosis or interpretation or explanation, or attempts to diagnose or to make any interpretation or explanation of the registered shadow or shadows of any part of the human teeth, alveolar process, maxilla, mandible or soft tissues adjacent thereto by the use of X-ray is declared to be engaged in the practice of dentistry, medicine, or surgery.

The practice of dentistry includes the performance of any dental or oral and maxillofacial surgery. "Oral and maxillofacial surgery" means the specialty of dentistry that includes the diagnosis and surgical and adjunctive treatment of dis-

eases, injuries, and defects of the hard and soft tissues of the oral and maxillofacial region. [2011 c 336 § 477; 1996 c 259 § 1; 1957 c 98 § 1; 1957 c 52 § 20. Prior: (i) 1935 c 112 § 6; RRS § 10031-6. (ii) 1943 c 240 § 1; Rem. Supp. 1943 § 10031-6a.]

18.32.735 Unlawful practice—Hygienists—Penalty.

Any licensed dentist who shall permit any dental hygienist operating under his or her supervision to perform any operation required to be performed by a dentist under the provisions of this chapter shall be guilty of a misdemeanor. [2011 c 336 § 478; 1935 c 112 § 28; RRS § 10031-28. Formerly RCW 18.32.340.]

18.32.765 Pilot project—Commission—Authority over budget. (Effective January 1, 2012.)

(1) The commission may conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. If the commission intends to conduct a pilot project, it must provide a notice in writing to the secretary by June 1, 2008. If the commission chooses to conduct a pilot project, the pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to its professions, dentists licensed under this chapter and expanded function dental auxiliaries and dental assistants regulated under chapter 18.260 RCW; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to

existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under RCW 18.71.430, 18.79.390, and 18.25.210, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement. [2011 c 60 § 6; 2008 c 134 § 32.]

Effective date—2011 c 60: See RCW 42.17A.919.

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

**Chapter 18.34 RCW
DISPENSING OPTICIANS**

Sections

- 18.34.010 Licensing—Exemptions—Limitations.
- 18.34.151 Licensing requirements—Military training or experience.

18.34.010 Licensing—Exemptions—Limitations.

Nothing in this chapter shall:

(1) Be construed to limit or restrict a duly licensed physician or optometrist or employees working under the personal supervision of a duly licensed physician or optometrist from the practices enumerated in this chapter, and each such licensed physician and optometrist shall have all the rights and privileges which may accrue under this chapter to dispensing opticians licensed hereunder;

(2) Be construed to prohibit or restrict practice by a regularly enrolled student in a prescribed course in opticianry in a college or university approved by the secretary whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the supervision of a licensed dispensing optician, optometrist, or ophthalmologist: PROVIDED, That persons practicing under this section must be clearly identified as students;

(3) Be construed to prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory, or shop;

(4) Be construed to prohibit an unlicensed person from engaging in the sale of spectacles, eyeglasses, magnifying glasses, goggles, sunglasses, telescopes, binoculars, or any such articles which are completely preassembled and sold only as merchandise;

(5) Be construed to authorize or permit a licensee hereunder to hold himself or herself out as being able to, or to offer to, or to undertake to attempt, by any manner of means, to examine or exercise eyes, diagnose, treat, correct, relieve, operate, or prescribe for any human ailment, deficiency, deformity, disease, or injury. [2011 c 336 § 479; 2010 c 16 § 1; 1957 c 43 § 1.]

18.34.151 Licensing requirements—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 2.]

Chapter 18.36A RCW NATUROPATHY

Sections

18.36A.020	Definitions.
18.36A.030	License required.
18.36A.040	Scope of practice.
18.36A.060	Powers of secretary—Application of uniform disciplinary act.
18.36A.070	Repealed.
18.36A.080	Civil immunity.
18.36A.090	Requirements for licensure.
18.36A.100	Standards for approval of educational programs.
18.36A.110	Examination for licensure.
18.36A.120	License standards for applicants from other jurisdictions—Reciprocity.
18.36A.150	Board of naturopathy.
18.36A.160	Board of naturopathy—Duties.

18.36A.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the board of naturopathy created in RCW 18.36A.150.

(2) "Common diagnostic procedures" means the use of venipuncture consistent with the practice of naturopathic medicine, commonly used diagnostic modalities consistent with naturopathic practice, health history taking, physical examination, radiography, examination of body orifices excluding endoscopy, laboratory medicine, and obtaining samples of human tissues, but excluding incision or excision beyond that which is authorized as a minor office procedure.

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

(4) "Educational program" means an accredited program preparing persons for the practice of naturopathic medicine.

(5) "Homeopathy" means a system of medicine based on the use of infinitesimal doses of medicines capable of producing symptoms similar to those of the disease treated, as listed in the homeopathic pharmacopeia of the United States.

(6) "Hygiene and immunization" means the use of such preventative techniques as personal hygiene, asepsis, public health, and immunizations, to the extent allowed by rule.

(7) "Manual manipulation" or "mechanotherapy" means manipulation of a part or the whole of the body by hand or by mechanical means.

(8) "Minor office procedures" means care and procedures incident thereto of superficial lacerations, lesions, and abrasions, and the removal of foreign bodies located in superficial structures, not to include the eye; and the use of antiseptics and topical or local anesthetics in connection therewith. "Minor office procedures" also includes intramuscular, intravenous, subcutaneous, and intradermal injections of substances consistent with the practice of naturopathic medicine and in accordance with rules established by the secretary.

(9) "Naturopath" means an individual licensed under this chapter.

(10) "Naturopathic medicines" means vitamins; minerals; botanical medicines; homeopathic medicines; hormones; and those legend drugs and controlled substances consistent with naturopathic medical practice in accordance with rules established by the board. Controlled substances are limited to codeine and testosterone products that are contained in Schedules III, IV, and V in chapter 69.50 RCW.

(11) "Nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of foods, water, herbs, roots, bark, or natural food elements.

(12) "Physical modalities" means use of physical, chemical, electrical, and other modalities that do not exceed those used as of July 22, 2011, in minor office procedures or common diagnostic procedures, including but not limited to heat, cold, air, light, water in any of its forms, sound, massage, and therapeutic exercise.

(13) "Radiography" means the ordering, but not the interpretation, of radiographic diagnostic and other imaging studies and the taking and interpretation of standard radiographs.

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

(15) "Suggestion" means techniques including but not limited to counseling, biofeedback, and hypnosis. [2011 c 41 § 3; 2011 c 40 § 1; 2005 c 158 § 1; 1991 c 3 § 87; 1987 c 447 § 4.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2011 c 40 § 1 and by 2011 c 41 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Education and training requirements—2005 c 158: "The secretary [of health], in consultation with the naturopathic advisory committee and the Washington state board of pharmacy, shall develop education and training requirements for the use of controlled substances authorized under this act. The requirements must be met by the naturopath prior to being authorized to prescribe controlled substances under this act." [2005 c 158 § 3.]

18.36A.030 License required. (1) No person may practice naturopathy or represent himself or herself as a naturopath without first applying for and receiving a license from the secretary to practice naturopathy.

(2) A person represents himself or herself as a naturopath when that person adopts or uses any title or any description of services that incorporates one or more of the following terms or designations: Naturopath, naturopathy, naturopathic, naturopathic physician, ND, or doctor of naturopathic medicine. [2011 c 41 § 4; 1991 c 3 § 88; 1987 c 447 § 2.]

18.36A.040 Scope of practice. Naturopathic medicine is the practice by naturopaths of the art and science of the diagnosis, prevention, and treatment of disorders of the body by stimulation or support, or both, of the natural processes of the human body. A naturopath is responsible and accountable to the consumer for the quality of naturopathic care rendered.

The practice of naturopathic medicine includes manual manipulation (mechanotherapy), the prescription, administration, dispensing, and use, except for the treatment of malignancies, of nutrition and food science, physical modalities, minor office procedures, homeopathy, naturopathic medicines, hygiene and immunization, contraceptive devices, common diagnostic procedures, and suggestion; however, nothing in this chapter shall prohibit consultation and treatment of a patient in concert with a practitioner licensed under chapter 18.57 or 18.71 RCW. No person licensed under this chapter may employ the term "chiropractic" to describe any services provided by a naturopath under this chapter. [2011 c 40 § 2; 2005 c 158 § 2; 1991 c 3 § 89; 1988 c 246 § 1; 1987 c 447 § 3.]

Education and training requirements—2005 c 158: See note following RCW 18.36A.020.

18.36A.060 Powers of secretary—Application of uniform disciplinary act. In addition to any other authority provided by law, the secretary may:

(1) Set all license, examination, and renewal fees in accordance with RCW 43.70.250;

(2) Establish forms and procedures necessary to administer this chapter;

(3) Issue a license to any applicant who has met the education, training, and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure; except that denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(4) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and to

hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;

(5) Maintain the official department record of all applicants and licensees; and

(6) Conduct a hearing on an appeal of a denial of a license based on the applicant's failure to meet the minimum qualifications for licensure. The hearing shall be conducted pursuant to chapter 34.05 RCW. [2011 c 41 § 5; 1991 c 3 § 91; 1987 c 447 § 6.]

18.36A.070 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

18.36A.080 Civil immunity. The secretary, members of the board, or individuals acting on their behalf, are immune from suit in any civil action based on any act performed in the course of their duties. [2011 c 41 § 6; 1991 c 3 § 93; 1987 c 447 § 8.]

18.36A.090 Requirements for licensure. The department shall issue a license to any applicant who meets the following requirements:

(1) Successful completion of an educational program approved by the board, the minimum standard of which shall be the successful completion of a doctorate degree program in naturopathy which includes a minimum of two hundred postgraduate hours in the study of mechanotherapy from an approved educational program, or successful completion of equivalent alternate training that meets the criteria established by the board. The requirement for two hundred postgraduate hours in the study of mechanotherapy shall expire June 30, 1989;

(2) Successful completion of any equivalent experience requirement established by the board;

(3) Successful completion of an examination administered or approved by the board;

(4) Good moral character; and

(5) Not having engaged in unprofessional conduct or being unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

The board shall establish what constitutes adequate proof of meeting the above requirements. Any person holding a valid license to practice drugless therapeutics under chapter 18.36 RCW upon January 1, 1988, shall be deemed licensed pursuant to this chapter. [2011 c 41 § 7; 1991 c 3 § 94; 1987 c 447 § 9.]

18.36A.100 Standards for approval of educational programs. (1) The board shall establish by rule the standards for approval of educational programs and alternate training and may contract with individuals or organizations having expertise in the profession and/or in education to report to the board the information necessary for the board to evaluate the educational programs. The standards for approval shall be based on the minimal competencies necessary for safe practice. The standards and procedures for approval shall apply equally to educational programs and equivalent alternate training within the United States and those in foreign jurisdictions.

(2) Each educational program requesting approval shall pay all administrative costs for the educational program evaluation, including, but not limited to, costs for site evaluation. [2011 c 41 § 8; 1991 c 3 § 95; 1987 c 447 § 10.]

18.36A.110 Examination for licensure. (1) The date and location of the examination shall be established by the board. Applicants who have been found to meet the education and experience requirements for licensure shall be scheduled for the next examination following the filing of the application. The board shall establish by rule the examination application deadline.

(2) The examination shall contain subjects appropriate to the standards of competency and scope of practice.

(3) The board shall establish by rule the requirements for a reexamination if the applicant has failed the examination.

(4) The board may approve an examination prepared or administered, or both, by a private testing agency or association of licensing boards. [2011 c 41 § 9; 1991 c 3 § 96; 1987 c 447 § 11.]

18.36A.120 License standards for applicants from other jurisdictions—Reciprocity. The board shall establish by rule the standards for licensure of applicants licensed in another jurisdiction. However, the standards for reciprocity of licensure shall not be less than required for licensure in the state of Washington. [2011 c 41 § 10; 1991 c 3 § 97; 1987 c 447 § 12.]

18.36A.150 Board of naturopathy. (1) There is created the board of naturopathy consisting of seven members appointed by the governor to four-year terms. Five members of the board shall be persons licensed under this chapter and two shall be members of the public. No member may serve more than two consecutive full terms. Members hold office until their successors are appointed. The governor may appoint the initial members of the board to staggered terms from one to four years. Thereafter, all members shall be appointed to full four-year terms.

(2) The public members of the board may not be a member of any other health care licensing board or commission, have a fiduciary obligation to a facility rendering services regulated under this chapter, or have a material or financial interest in the rendering of services regulated under this chapter.

(3) The board shall elect officers each year. The board shall meet at least twice each year and may hold additional meetings as called by the chair. Meetings of the board are open to the public, except that the board may hold executive sessions to the extent permitted by chapter 42.30 RCW. The department shall provide secretarial, clerical, and other assistance as required by the board.

(4) Each member of the board shall be compensated in accordance with RCW 43.03.240. Members shall be reimbursed for travel expenses incurred in the actual performance of their duties, as provided in RCW 43.03.050 and 43.03.060.

(5) A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the

[2011 RCW Supp—page 298]

board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

(6) The board may appoint members to panels of at least three members. A quorum for transaction of any business by a panel is a minimum of three members. A majority vote of a quorum of the panel is required to transact business delegated to it by the board.

(7) The board may adopt such rules as are consistent with this chapter as may be deemed necessary and proper to carry out the purposes of this chapter.

(8) The governor may remove a member of the board for neglect of duty, misconduct, or malfeasance or misfeasance in office. Whenever the governor is satisfied that a member of the board has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, he or she shall file with the secretary of state a statement of the cause for and the order of removal from office, and the secretary shall immediately send a certified copy of the order of removal and statement of causes by certified mail to the last known post office address of the member. If a vacancy occurs on the board, the governor shall appoint a replacement to fill the remainder of the unexpired term. [2011 c 41 § 1.]

18.36A.160 Board of naturopathy—Duties. (1) In addition to any other authority provided by law, the board shall:

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

(b) Determine the minimum education and experience requirements for licensure in conformance with RCW 18.36A.090, including, but not limited to, approval of educational programs;

(c) Prepare and administer, or approve the preparation and administration of, examinations for licensure;

(d) Establish by rule the procedures for an appeal of examination failure;

(e) Determine whether alternative methods of training are equivalent to formal education, and establish forms, procedures, and criteria for evaluation of an applicant's equivalent alternative training to determine the applicant's eligibility to take the examination; and

(f) Adopt rules implementing a continuing competency program.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2011 c 41 § 2.]

Chapter 18.39 RCW

EMBALMERS—FUNERAL DIRECTORS

Sections

18.39.570 Military training or experience.

18.39.570 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 4.]

Chapter 18.43 RCW

ENGINEERS AND LAND SURVEYORS

Sections

18.43.010	General provisions.
18.43.030	Board of registration—Members—Terms—Qualifications—Compensation and travel expenses.
18.43.070	Certificates and seals.
18.43.120	Violations and penalties.
18.43.190	Military training or experience.

18.43.010 General provisions. In order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying, shall hereafter be required to submit evidence that he or she is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or to offer to practice in this state, engineering or land surveying, as defined in the provisions of this chapter, or to use in connection with his or her name or otherwise assume, use, or advertise any title or description tending to convey the impression that he or she is a professional engineer or a land surveyor, unless such a person has been duly registered under the provisions of this chapter. [2011 c 336 § 480; 1947 c 283 § 1; Rem. Supp. 1947 § 8306-21. Prior: 1935 c 167 § 2; RRS § 8306-2.]

False advertising: Chapter 9.04 RCW.

18.43.030 Board of registration—Members—Terms—Qualifications—Compensation and travel expenses. A state board of registration for professional engineers and land surveyors is hereby created which shall exercise all of the powers and perform all of the duties conferred upon it by this chapter. After July 9, 1986, the board shall consist of seven members, who shall be appointed by the governor and shall have the qualifications as hereinafter required. The terms of board members in office on June 11, 1986, shall not be affected. The first additional member shall be appointed for a four-year term and the second additional member shall be appointed for a three-year term. On the expiration of the term of any member, the governor shall appoint a successor for a term of five years to take the place of the member whose term on said board is about to expire. However, no member shall serve more than two consecutive terms on the board. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified.

Five members of the board shall be registered professional engineers licensed under the provisions of this chapter. Two members shall be registered professional land surveyors licensed under this chapter. Each of the members of the board shall have been actively engaged in the practice of engineering or land surveying for at least ten years subsequent to registration, five of which shall have been immediately prior to their appointment to the board.

Each member of the board shall be a citizen of the United States and shall have been a resident of this state for at least five years immediately preceding his or her appointment.

Each member of the board shall be compensated in accordance with RCW 43.03.240 and, in addition thereto,

shall be reimbursed for travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060.

The governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as hereinabove provided. [2011 c 336 § 481; 1986 c 102 § 1; 1984 c 287 § 35; 1975-'76 2nd ex.s. c 34 § 37; 1947 c 283 § 3; Rem. Supp. 1947 § 8306-23.]

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

Additional notes found at www.leg.wa.gov

18.43.070 Certificates and seals. The director of licensing shall issue a certificate of registration upon payment of a registration fee as provided for in this chapter, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. In case of a registered engineer, the certificate shall authorize the practice of "professional engineering" and specify the branch or branches in which specialized, and in case of a registered land surveyor, the certificate shall authorize the practice of "land surveying."

In case of engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer-in-training." In case of land-surveyor-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental surveying subjects required by the board and has been enrolled as a "land-surveyor-in-training." All certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the chair and the secretary of the board and by the director of licensing.

The issuance of a certificate of registration by the director of licensing shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered professional engineer or a registered land surveyor, while the said certificate remains unrevoked and unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered professional engineer" or "registered land surveyor." Plans, specifications, plats, and reports prepared by the registrant shall be signed, dated, and stamped with said seal or facsimile thereof. Such signature and stamping shall constitute a certification by the registrant that the same was prepared by or under his or her direct supervision and that to his or her knowledge and belief the same was prepared in accordance with the requirements of the statute. It shall be unlawful for anyone to stamp or seal any document with said seal or facsimile thereof after the certificate of registrant named thereon has expired or been revoked, unless said certificate shall have been renewed or reissued. [2011 c 336 § 482; 1995 c 356 § 4; 1991 c 19 § 5; 1959 c 297 § 4; 1947 c 283 § 10; Rem. Supp. 1947 § 8306-27. Prior: 1935 c 167 §§ 8, 13; RRS § 8306-8, 13.]

Additional notes found at www.leg.wa.gov

18.43.120 Violations and penalties. Any person who shall practice, or offer to practice, engineering or land surveying in this state without being registered in accordance with the provisions of the chapter, or any person presenting or attempting to use as his or her own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant, or any person who shall attempt to use the expired or revoked certificate of registration, or any person who shall violate any of the provisions of this chapter shall be guilty of a gross misdemeanor.

It shall be the duty of all officers of the state or any political subdivision thereof, to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the board, and render such legal assistance as may be necessary in carrying out the provisions of this chapter. [2011 c 336 § 483; 1986 c 102 § 4; 1947 c 283 § 15; Rem. Supp. 1947 § 8306-32. Prior: 1935 c 167 § 14; RRS § 8306-14.]

Forgery: RCW 9A.60.020.

18.43.190 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 5.]

Chapter 18.44 RCW

ESCROW AGENT REGISTRATION ACT

Sections

18.44.011	Definitions.
18.44.195	Examination.
18.44.221	Waiver of bond or policy where not reasonably available—Determination procedure—Waiver period.
18.44.251	Waiver—Affidavit.
18.44.425	Subpoena authority—Application—Contents—Notice—Fees.
18.44.500	Committee to advise director—Members—Compensation and travel expenses.
18.44.510	Compensation and travel expenses of committee members.
18.44.901	Construction—1965 c 153.

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

(1) "Committee" means the escrow advisory committee of the state of Washington created by RCW 18.44.500.

(2) "Controlling person" is any person who owns or controls ten percent or more of the beneficial ownership of any escrow agent, regardless of the form of business organization employed and regardless of whether such interest stands in such person's true name or in the name of a nominee.

(3) "Department" means the department of financial institutions.

(4) "Designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director as the licensed escrow officer responsible for supervising that agent's handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent.

(5) "Director" means the director of financial institutions, or his or her duly authorized representative.

(6) "Director of licensing" means the director of the department of licensing, or his or her duly authorized representative.

(7) "Escrow" means any transaction, except the acts of a qualified intermediary in facilitating an exchange under section 1031 of the internal revenue code, wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he or she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

(8) "Escrow agent" means any person engaged in the business of performing for compensation the duties of the third person referred to in subsection (7) of this section.

(9) "Licensed escrow agent" means any sole proprietorship, firm, association, partnership, or corporation holding a license as an escrow agent under the provisions of this chapter.

(10) "Licensed escrow officer" means any natural person handling escrow transactions and licensed as such by the director.

(11) "Person" means a natural person, firm, association, partnership, corporation, limited liability company, or the plural thereof, whether resident, nonresident, citizen, or not.

(12) "Split escrow" means a transaction in which two or more escrow agents act to effect and close an escrow transaction. [2011 1st sp.s. c 21 § 45. Prior: 2010 c 34 § 1; 1999 c 30 § 1; 1995 c 238 § 1; 1985 c 7 § 47; 1979 c 158 § 42; 1977 ex.s. c 156 § 1; 1971 ex.s. c 245 § 1; 1965 c 153 § 1. Formerly RCW 18.44.010.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

18.44.195 Examination. (1) Any person desiring to become a licensed escrow officer must successfully pass an examination as required by the director.

(2) The examination shall be in such form as prescribed by the director with the advice of the committee. [2011 1st sp.s. c 21 § 48; 2010 c 34 § 9; 1999 c 30 § 4.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

18.44.221 Waiver of bond or policy where not reasonably available—Determination procedure—Waiver period. The director shall, within thirty days after a written request, hold a public hearing to determine whether the fidelity bond, surety bond, and/or the errors and omissions policy specified in RCW 18.44.201 is reasonably available to a substantial number of licensed escrow agents. If the director determines and the insurance commissioner concurs that such bond or bonds and/or policy is not reasonably available, the

director shall waive the requirements for such bond or bonds and/or policy for a fixed period of time. [2011 1st sp.s. c 21 § 46; 1999 c 30 § 31; 1988 c 178 § 2; 1977 ex.s. c 156 § 30. Formerly RCW 18.44.360.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

18.44.251 Waiver—Affidavit. A request for a waiver of the required errors and omissions policy may be accomplished under the statute by submitting to the director an affidavit that substantially addresses the following:

REQUEST FOR WAIVER OF ERRORS AND OMISSIONS POLICY

I,, residing at, City of, County of, State of Washington, declare the following:

- (1) An errors and omissions policy is not reasonably available to a substantial number of licensed escrow officers; and
(2) Purchasing an errors and omissions policy is cost-prohibitive at this time; and
(3) I have not engaged in any conduct that resulted in the termination of my escrow certificate; and
(4) I have not paid, directly or through an errors and omissions policy, claims in excess of ten thousand dollars, exclusive of costs and attorneys' fees, during the calendar year preceding submission of this affidavit; and
(5) I have not paid, directly or through an errors and omissions policy, claims, exclusive of costs and attorneys' fees, totaling in excess of twenty thousand dollars in the three calendar years immediately preceding submission of this affidavit; and
(6) I have not been convicted of a crime involving honesty or moral turpitude during the calendar year preceding submission of this application.

THEREFORE, in consideration of the above, I,, respectfully request that the director of financial institutions grant this request for a waiver of the requirement that I purchase and maintain an errors and omissions policy covering my activities as an escrow agent licensed by the state of Washington for the period from, 19, to, 19

Submitted this day of day of, 19

State of Washington, }
County of } ss.
(signature)

I certify that I know or have satisfactory evidence that, signed this instrument and acknowledged it to be free and voluntary act for the uses and purposes mentioned in the instrument.

(Seal or stamp) Dated
Signature of Notary Public
Title
My appointment expires

[2011 1st sp.s. c 21 § 47; 1995 c 238 § 5; 1987 c 471 § 10. Formerly RCW 18.44.380.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

18.44.425 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
(b) Adequately specify the documents, records, evidence, or testimony; and
(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 2.]

Finding—Intent—2011 c 93: "The legislature finds that in the case of State v. Miles, the state supreme court held that Article I, section 7 of the state Constitution requires judicial review of a subpoena under some circumstances. The legislature intends to provide a process for the department to apply for court approval of an agency investigative subpoena that is authorized under law in cases when the agency seeks approval, or when court approval is required by Article I, section 7 of the state Constitution. The legislature does not intend to require court approval except when otherwise required by law or Article I, section 7 of the state Constitution." [2011 c 93 § 1.]

18.44.500 Committee to advise director—Members—Compensation and travel expenses. There is established a committee of the state of Washington, to consist of the director of financial institutions or his or her designee as chair, and five other members who shall act as advisors to the director as to the needs of the escrow profession, including but not limited to the design and conduct of tests to be administered to applicants for escrow licenses, the schedule of license fees to be applied to the escrow licensees, educational programs, audits and investigations of the escrow profession designed to protect the consumer, and such other matters determined appropriate. The director is hereby empowered to and shall appoint the other members, each of whom shall have been a resident of this state for at least five years and shall have at least five years experience in the practice of

escrow as an escrow agent or as a person in responsible charge of escrow transactions.

Every member of the committee shall receive a certificate of appointment from the director and before beginning the member's term of office shall file with the secretary of state a written oath or affirmation for the faithful discharge of the member's official duties. On the expiration of the term of each member, the director shall appoint a successor to serve for a term of five years or until the member's successor has been appointed and qualified.

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

Members shall be compensated in accordance with RCW 43.03.240, and shall be reimbursed for their travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 21 § 50; 2011 c 336 § 484; 1995 c 238 § 3; 1985 c 340 § 3; 1984 c 287 § 36. Formerly RCW 18.44.208.]

Reviser's note: This section was amended by 2011 c 336 § 484 and by 2011 1st sp.s. c 21 § 50, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

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

Additional notes found at www.leg.wa.gov

18.44.510 Compensation and travel expenses of committee members. The committee members shall each be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses as provided for state officials and employees in RCW 43.03.050 and 43.03.060, when called into session by the director or when otherwise engaged in the business of the committee. [2011 1st sp.s. c 21 § 49; 1984 c 287 § 37; 1977 ex.s. c 156 § 29. Formerly RCW 18.44.215.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

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

18.44.901 Construction—1965 c 153. Nothing in this chapter shall be so construed as to authorize any escrow agent, or his or her employees or agents, to engage in the practice of law, and nothing in this chapter shall be so construed as to impose any additional liability on any depository authorized by this chapter and the receipt or acquittance of the persons so paid by such depository shall be a valid and sufficient release and discharge of such depository. [2011 c 336 § 485; 1965 c 153 § 20. Formerly RCW 18.44.900.]

Chapter 18.51 RCW NURSING HOMES

Sections

18.51.050	License—Issuance, renewal—Fee—Display.
18.51.060	Penalties—Grounds.
18.51.070	Rules.
18.51.200	Preliminary review of complaint—On-site investigation.
18.51.560	Employment of physicians.

[2011 RCW Supp—page 302]

18.51.050 License—Issuance, renewal—Fee—Display. (1)(a) Upon receipt of an application for a license, the department may issue a license if the applicant and the nursing home's facilities meet the requirements established under this chapter, except that the department shall issue a temporary license to a court-appointed receiver for a period not to exceed six months from the date of appointment.

(b)(i) Except as provided in (b)(ii) of this subsection, prior to the issuance or renewal of the license, the licensee shall pay a license fee. Beginning July 1, 2011, and thereafter, the per bed license fee must be established in the omnibus appropriations act and any amendment or additions made to that act. The license fees established in the omnibus appropriations act and any amendment or additions made to that act may not exceed the department's annual licensing and oversight activity costs and shall include the department's cost of paying providers for the amount of the license fee attributed to Medicaid clients.

(ii) No fee shall be required of government operated institutions or court-appointed receivers.

(c) A license issued under this chapter may not exceed twelve months in duration and expires on a date set by the department.

(d) In the event of a change of ownership, the previously established license expiration date shall not change.

(2) All applications and fees for renewal of the license shall be submitted to the department not later than thirty days prior to the date of expiration of the license. All applications and fees, if any, for change of ownership shall be submitted to the department not later than sixty days before the date of the proposed change of ownership. A nursing home license shall be issued only to the person who applied for the license. The license is valid only for the operation of the facility at the location specified in the license application. Licenses are not transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises. [2011 1st sp.s. c 3 § 401; 1991 sp.s. c 8 § 1; 1989 c 372 § 1; 1985 c 284 § 4; 1981 2nd ex.s. c 11 § 2; 1981 1st ex.s. c 2 § 17; 1975 1st ex.s. c 99 § 1; 1971 ex.s. c 247 § 2; 1953 c 160 § 4; 1951 c 117 § 6.]

Effective date—2011 1st sp.s. c 3 §§ 401-403: "Sections 401 through 403 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2011." [2011 1st sp.s. c 3 § 603.]

Finding—Intent—2011 1st sp.s. c 3: See note following RCW 70.128.005.

Additional notes found at www.leg.wa.gov

18.51.060 Penalties—Grounds. (1) In any case in which the department finds that a licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee failed or refused to comply with the requirements of this chapter or of chapter 74.42 RCW, or the standards, rules, and regulations established under them or, in the case of a Medicaid contractor, failed or refused to comply with the Medicaid requirements of Title XIX of the social security act, as amended, and regulations promulgated thereunder, the department may take any or all of the following actions:

- Suspend, revoke, or refuse to renew a license;
- Order stop placement;
- Assess monetary penalties of a civil nature;

(d) Deny payment to a nursing home for any medicaid resident admitted after notice to deny payment. Residents who are medicaid recipients shall not be responsible for payment when the department takes action under this subsection;

(e) Appoint temporary management as provided in subsection (7) of this section.

(2) The department may suspend, revoke, or refuse to renew a license, assess monetary penalties of a civil nature, or both, in any case in which it finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee:

(a) Operated a nursing home without a license or under a revoked or suspended license; or

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

(c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the nursing home; or

(d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter or of chapter 74.42 RCW; or

(e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of chapter 74.42 RCW or the standards, rules, and regulations adopted under them; or

(f) Failed to report patient abuse or neglect in violation of chapter 70.124 RCW; or

(g) Fails to pay any civil monetary penalty assessed by the department pursuant to this chapter within ten days after such assessment becomes final.

(3) The department shall deny payment to a nursing home having a medicaid contract with respect to any medicaid-eligible individual admitted to the nursing home when:

(a) The department finds the nursing home not in compliance with the requirements of Title XIX of the social security act, as amended, and regulations promulgated thereunder, and the facility has not complied with such requirements within three months; in such case, the department shall deny payment until correction has been achieved; or

(b) The department finds on three consecutive standard surveys that the nursing home provided substandard quality of care; in such case, the department shall deny payment for new admissions until the facility has demonstrated to the satisfaction of the department that it is in compliance with medicaid requirements and that it will remain in compliance with such requirements.

(4)(a) Civil penalties collected under this section or under chapter 74.42 RCW shall be deposited into a special fund administered by the department to be applied to the protection of the health or property of residents of nursing homes found to be deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day a nursing

home is or was out of compliance. Civil monetary penalties shall not exceed three thousand dollars per violation. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(c) Any civil penalty assessed under this section or chapter 74.46 RCW shall be a nonreimbursable item under chapter 74.46 RCW.

(5)(a) The department shall order stop placement on a nursing home, effective upon oral or written notice, when the department determines:

(i) The nursing home no longer substantially meets the requirements of chapter 18.51 or 74.42 RCW, or in the case of medicaid contractors, the requirements of Title XIX of the social security act, as amended, and any regulations promulgated under such statutes; and

(ii) The deficiency or deficiencies in the nursing home:

(A) Jeopardize the health and safety of the residents, or

(B) Seriously limit the nursing home's capacity to provide adequate care.

(b) When the department has ordered a stop placement, the department may approve a readmission to the nursing home from a hospital when the department determines the readmission would be in the best interest of the individual seeking readmission.

(c) The department shall terminate the stop placement when:

(i) The provider states in writing that the deficiencies necessitating the stop placement action have been corrected; and

(ii) The department staff confirms in a timely fashion not to exceed fifteen working days that:

(A) The deficiencies necessitating stop placement action have been corrected, and

(B) The provider exhibits the capacity to maintain adequate care and service.

(d) A nursing home provider shall have the right to an informal review to present written evidence to refute the deficiencies cited as the basis for the stop placement. A request for an informal review must be made in writing within ten days of the effective date of the stop placement.

(e) A stop placement shall not be delayed or suspended because the nursing home requests a hearing pursuant to chapter 34.05 RCW or an informal review. The stop placement shall remain in effect until:

(i) The department terminates the stop placement; or

(ii) The stop placement is terminated by a final agency order, after a hearing, pursuant to chapter 34.05 RCW.

(6) If the department determines that an emergency exists as a result of a nursing home's failure or refusal to comply with requirements of this chapter or, in the case of a medicaid contractor, its failure or refusal to comply with medicaid requirements of Title XIX of the social security act, as amended, and rules adopted thereunder, the department may suspend the nursing home's license and order the immediate closure of the nursing home, the immediate transfer of residents, or both.

(7) If the department determines that the health or safety of residents is immediately jeopardized as a result of a nursing home's failure or refusal to comply with requirements of this chapter or, in the case of a medicaid contractor, its failure

or refusal to comply with medicaid requirements of Title XIX of the social security act, as amended, and rules adopted thereunder, the department may appoint temporary management to:

- (a) Oversee the operation of the facility; and
- (b) Ensure the health and safety of the facilities residents while:
 - (i) Orderly closure of the facility occurs; or
 - (ii) The deficiencies necessitating temporary management are corrected.

(8) The department shall by rule specify criteria as to when and how the sanctions specified in this section shall be applied. Such criteria shall provide for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of the residents. [2011 c 336 § 486; 1989 c 372 § 8; 1987 c 476 § 23; 1981 1st ex.s. c 2 § 18; 1979 ex.s. c 228 § 10; 1975 1st ex.s. c 99 § 2; 1953 c 160 § 5; 1951 c 117 § 7.]

Additional notes found at www.leg.wa.gov

18.51.070 Rules. The department, after consultation with the board of health, shall adopt, amend, and promulgate such rules, regulations, and standards with respect to all nursing homes to be licensed hereunder as may be designed to further the accomplishment of the purposes of this chapter in promoting safe and adequate medical and nursing care of individuals in nursing homes and the sanitary, hygienic, and safe conditions of the nursing home in the interest of public health, safety, and welfare. [2011 c 151 § 3; 1979 ex.s. c 211 § 64; 1951 c 117 § 8.]

Additional notes found at www.leg.wa.gov

18.51.200 Preliminary review of complaint—On-site investigation. Upon receipt of a complaint, the department shall make a preliminary review of the complaint. Unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, or unless the department has sufficient information that corrective action has been taken, it shall make an on-site investigation within a reasonable time after the receipt of the complaint or otherwise ensure complaints are responded to. In either event, the complainant shall be promptly informed of the department's proposed course of action. If the complainant requests the opportunity to do so, the complainant or his or her representative, or both, may be allowed to accompany the inspector to the site of the alleged violations during his or her tour of the facility, unless the inspector determines that the privacy of any patient would be violated thereby. [2011 c 336 § 487; 1981 1st ex.s. c 2 § 21; 1975 1st ex.s. c 99 § 5.]

Additional notes found at www.leg.wa.gov

18.51.560 Employment of physicians. (1) A nursing home licensed under this chapter may employ physicians for the provision of professional services to its residents under the following conditions:

- (a) The nursing home may not in any manner, directly or indirectly, supplant, diminish, or regulate any employed phy-

sician's judgment concerning the practice of medicine or the diagnosis and treatment of any patient; and

(b) The employed physicians may provide professional services only to residents of the nursing home or a related living facility.

(2) The employment of physicians as authorized by this section may be through the following entities:

- (a) The entity licensed to operate the nursing home; or
- (b) A separate entity authorized to conduct business in the state of Washington that has common or overlapping ownership as an affiliate or subsidiary of the licensee, as long as the licensee complies with subsection (3) of this section.

(3) Nothing in this section relieves the licensee of its ultimate responsibility for the daily operations of the nursing home.

(4) Nothing in this section may be construed to interfere with the federal resident rights requirements found in 42 C.F.R. 483.10, or successor rules, or found in this chapter, chapter 74.42 RCW, or the rules adopted by the department addressing resident's rights under this chapter or chapter 74.42 RCW.

(5) As used in this section, "related living facility" means (a) a separate nursing home that is owned, controlled, or managed by the same or an affiliated or subsidiary entity; or (b) a facility that (i) provides independent living services or boarding home services under chapter 18.20 RCW, in a single contiguous campus as the nursing home, and (ii) is owned, controlled, or managed by the same or related entity as the nursing home. For purposes of this subsection "contiguous" means land adjoining or touching property on which the nursing home is located, including land divided by a public road. [2011 c 228 § 1.]

Monitoring—Report—2011 c 228: "The department of social and health services shall monitor nursing homes who hire physicians on staff and report to the legislature by January 1, 2013. The report shall include information on consumer satisfaction and medical cost implications of including physicians on staff in nursing facilities." [2011 c 228 § 3.]

Chapter 18.52 RCW

NURSING HOME ADMINISTRATORS

Sections

- 18.52.030 Management and supervision of nursing homes by licensed administrators required.
- 18.52.040 Board of nursing home administrators—Created—Membership.

18.52.030 Management and supervision of nursing homes by licensed administrators required. Nursing homes operating within this state shall be under the active, overall administrative charge and supervision of an on-site full-time administrator licensed as provided in this chapter. No person acting in any capacity, unless the holder of a nursing home administrator's license issued under this chapter, shall be charged with the overall responsibility to make decisions or direct actions involved in managing the internal operation of a nursing home, except as specifically delegated in writing by the administrator to identify a responsible person to act on the administrator's behalf when the administrator is absent. The administrator shall review the decisions upon the administrator's return and amend the decisions if necessary. The board shall define by rule the parameters for

on-site full-time administrators in nursing homes with small resident populations, nursing homes in rural areas, nursing homes with small resident populations when the nursing home has converted some of its licensed nursing facility bed capacity for use as assisted living or enhanced assisted living services under chapter 74.39A RCW, or separately licensed facilities collocated on the same campus. [2011 c 366 § 5; 2000 c 93 § 6; 1992 c 53 § 3; 1970 ex.s. c 57 § 3.]

Findings—Purpose—Conflict with federal requirements—2011 c 366: See notes following RCW 18.20.020.

18.52.040 Board of nursing home administrators—Created—Membership. The state board of nursing home administrators shall consist of nine members appointed by the governor. Four members shall be persons licensed under this chapter who have at least four years actual experience in the administration of a licensed nursing home in this state immediately preceding appointment to the board and who are not employed by the state or federal government.

Four members shall be representatives of the health care professions providing medical or nursing services in nursing homes who are privately or self-employed; or shall be persons employed by educational institutions who have special knowledge or expertise in the field of health care administration, health care education or long-term care or both, or care of the aged and chronically ill.

One member shall be a resident of a nursing home or a family member of a resident or a person eligible for medicare. No member who is a nonadministrator representative shall have any direct or family financial interest in nursing homes while serving as a member of the board. The governor shall consult with and seek the recommendations of the appropriate statewide business and professional organizations and societies primarily concerned with long term health care facilities in the course of considering his or her appointments to the board. Board members currently serving shall continue to serve until the expiration of their appointments. [2011 c 336 § 488; 1992 c 53 § 4; 1975 1st ex.s. c 97 § 1; 1970 ex.s. c 57 § 4.]

Chapter 18.54 RCW OPTOMETRY BOARD

Sections

18.54.030	Composition—Appointments—Qualifications—Terms—Vacancies.
18.54.040	Officers.
18.54.050	Meetings.

18.54.030 Composition—Appointments—Qualifications—Terms—Vacancies. The initial composition of the optometry board includes the three members of the examining committee for optometry plus two more optometrists to be appointed by the governor.

The governor must make all appointments to the optometry board. Only optometrists who are citizens of the United States, residents of this state, having been licensed to practice and practicing optometry in this state for a period of at least four years immediately preceding the effective date of appointment, and who have no connection with any school or

college embracing the teaching of optometry or with any optical supply business may be appointed.

The governor may set the terms of office of the initial board at his or her discretion, to establish the following perpetual succession: The terms of the initial board include one position for one year, two for two years, and two for three years; and upon the expiration of the terms of the initial board, all appointments are for three years.

In addition to the members specified in this section, the governor shall appoint a consumer member of the board, who shall serve for a term of three years.

In the event that a vacancy occurs on the board in the middle of an appointee's term, the governor must appoint a successor for the unexpired portion of the term only. [2011 c 336 § 489; 1984 c 279 § 54; 1963 c 25 § 3.]

Additional notes found at www.leg.wa.gov

18.54.040 Officers. The board must elect a chair and secretary from its members, to serve for a term of one year or until their successors are elected and qualified. [2011 c 336 § 490; 1963 c 25 § 4.]

18.54.050 Meetings. The board must meet at least once yearly or more frequently upon call of the chair or the secretary of health at such times and places as the chair or the secretary of health may designate by giving three days' notice or as otherwise required by RCW 42.30.075. [2011 c 336 § 491; 1991 c 3 § 139; 1989 c 175 § 65; 1979 c 158 § 48; 1975 1st ex.s. c 69 § 9; 1963 c 25 § 5.]

Additional notes found at www.leg.wa.gov

Chapter 18.55 RCW OCULARISTS

Sections

18.55.043	Licensing requirements—Military training or experience.
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18.55.043 Licensing requirements—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 3.]

Chapter 18.57A RCW

OSTEOPATHIC PHYSICIANS' ASSISTANTS

Sections

18.57A.023	Practice requirements—Military training and experience.
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18.57A.023 Practice requirements—Military training and experience. An applicant with military training or experience satisfies the training and experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 4.]

Chapter 18.59 RCW
OCCUPATIONAL THERAPY

Sections

18.59.020	Definitions.
18.59.120	Board of occupational therapy practice established—Members—Terms—Meetings—Compensation.
18.59.160	Purchase, storage, and administration of medications—Restrictions—Liability.
18.59.170	Scope of practice—Wound care management.

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

(1) "Board" means the board of occupational therapy practice.

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

(3) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(4) "Occupational therapy" is the scientifically based use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Specific occupational therapy services include but are not limited to: Using specifically designed activities and exercises to enhance neurodevelopmental, cognitive, perceptual motor, sensory integrative, and psychomotor functioning; administering and interpreting tests such as manual muscle and sensory integration; teaching daily living skills; developing prevocational skills and play and avocational capabilities; designing, fabricating, or applying selected orthotic and prosthetic devices or selected adaptive equipment; wound care management as provided in RCW 18.59.170; and adapting environments for persons with disabilities. These services are provided individually, in groups, or through social systems.

(5) "Occupational therapy aide" means a person who is trained to perform specific occupational therapy techniques under professional supervision as defined by the board but who does not perform activities that require advanced training in the sciences or practices involved in the profession of occupational therapy.

(6) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the supervision or with the regular consultation of an occupational therapist.

(7) "Occupational therapy practitioner" means a person who is credentialed as an occupational therapist or occupational therapy assistant.

(8) "Person" means any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this chapter.

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

(10) "Sharp debridement" means the removal of loose or loosely adherent devitalized tissue with the use of tweezers, scissors, or scalpel, without any type of anesthesia other than topical anesthetics. "Sharp debridement" does not mean surgical debridement.

(11) "Wound care management" means a part of occupational therapy treatment that facilitates healing, prevents

edema, infection, and excessive scar formation, and minimizes wound complications. Treatment may include: Assessment of wound healing status; patient education; selection and application of dressings; cleansing of the wound and surrounding areas; application of topical medications, as provided under RCW 18.59.160; use of physical agent modalities; application of pressure garments and non-weight-bearing orthotic devices, excluding high-temperature custom foot orthotics made from a mold; sharp debridement of devitalized tissue; debridement of devitalized tissue with other agents; and adapting activities of daily living to promote independence during wound healing. [2011 c 88 § 1; 1999 c 333 § 1; 1991 c 3 § 153; 1984 c 9 § 3.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Rules—2011 c 88: See note following RCW 18.59.170.

18.59.120 Board of occupational therapy practice established—Members—Terms—Meetings—Compensation.

(1) There is established a board of occupational therapy practice. The board shall consist of five members appointed by the governor, who may consider the persons who are recommended for appointment by occupational therapy associations of the state. The members of the board shall be residents of the state. Four of the members shall have been engaged in rendering services to the public, teaching, or research in occupational therapy for at least five years immediately preceding their appointment. Three of these four board members shall be occupational therapists who shall at all times be holders of licenses for the practice of occupational therapy in the state, except for the initial members of the board, all of whom shall fulfill the requirements for licensure under this chapter. At least one member of the board shall be an occupational therapy assistant licensed to assist in the practice of occupational therapy, except for the initial member appointed to this position, who shall fulfill the requirements for licensure as a occupational therapy assistant under this chapter. The remaining member of the board shall be a member of the public with an interest in the rights of consumers of health services.

(2) The governor shall, within sixty days after June 7, 1984, appoint one member for a term of one year, two members for a term of two years, and two members for a term of three years. Appointments made thereafter shall be for three-year terms, but no person shall be appointed to serve more than two consecutive full terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the initial appointed members, who shall serve through the last calendar day of the year in which they are appointed before commencing the terms prescribed by this section. The governor shall make appointments for vacancies in unexpired terms within ninety days after the vacancies occur.

(3) The board shall meet during the first month of each calendar year to select a chair and for other purposes. At least one additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chair or the written request of any two board members. A majority of members of the board constitutes a quorum for all purposes. All meetings of the board shall be open to the public, except that the board may hold closed sessions to pre-

pare, approve, grade, or administer examinations or, upon request of an applicant who fails an examination, to prepare a response indicating the reasons for the applicant's failure.

(4) Members of the board shall receive compensation in the amount of fifty dollars for each day's attendance at proper meetings of the committee. [2011 c 336 § 492; 1984 c 9 § 13.]

18.59.160 Purchase, storage, and administration of medications—Restrictions—Liability. An occupational therapist licensed under this chapter may purchase, store, and administer topical and transdermal medications such as hydrocortisone, dexamethasone, fluocinonide, topical anesthetics, lidocaine, magnesium sulfate, and other similar medications for the practice of occupational therapy as prescribed by a health care provider with prescribing authority as authorized in RCW 18.59.100. Administration of medication must be documented in the patient's medical record. Some medications may be applied by the use of iontophoresis and phonophoresis. An occupational therapist may not purchase, store, or administer controlled substances. A pharmacist who dispenses such drugs to a licensed occupational therapist is not liable for any adverse reactions caused by any method of use by the occupational therapist. Application of a topical medication to a wound is subject to RCW 18.59.170. [2011 c 88 § 2; 2009 c 68 § 1.]

Rules—2011 c 88: See note following RCW 18.59.170.

18.59.170 Scope of practice—Wound care management. (1)(a) An occupational therapist licensed under this chapter may provide wound care management only:

(i) In the course of occupational therapy treatment to return patients to functional performance in their everyday occupations under the referral and direction of a physician or other authorized health care provider listed in RCW 18.59.100 in accordance with their scope of practice. The referring provider must evaluate the patient prior to referral to an occupational therapist for wound care; and

(ii) After filing an affidavit under subsection (2)(b) of this section.

(b) An occupational therapist may not delegate wound care management, including any form of debridement.

(2)(a) Debridement is not an entry-level skill and requires specialized training, which must include: Indications and contraindications for the use of debridement; appropriate selection and use of clean and sterile techniques; selection of appropriate tools, such as scissors, forceps, or scalpel; identification of viable and devitalized tissues; and conditions which require referral back to the referring provider. Training must be provided through continuing education, mentoring, cotreatment, and observation. Consultation with the referring provider is required if the wound exposes anatomical structures underlying the skin, such as tendon, muscle, or bone, or if there is an obvious worsening of the condition, or signs of infection.

(b)(i) Occupational therapists may perform wound care management upon showing evidence of adequate education and training by submitting an affidavit to the board attesting to their education and training as follows:

(A) For occupational therapists performing any part of wound care management, except sharp debridement with a scalpel, a minimum of fifteen hours of mentored training in a clinical setting is required to be documented in the affidavit. Mentored training includes observation, cotreatment, and supervised treatment by a licensed occupational therapist who is authorized to perform wound care management under this section or a health care provider who is authorized to perform wound care management in his or her scope of practice. Fifteen hours mentored training in a clinical setting must include a case mix similar to the occupational therapist's expected practice;

(B) For occupational therapists performing sharp debridement with a scalpel, a minimum of two thousand hours in clinical practice and an additional minimum of fifteen hours of mentored sharp debridement training in the use of a scalpel in a clinical setting is required to be documented in the affidavit. Mentored training includes observation, cotreatment, and supervised treatment by a licensed occupational therapist who is authorized to perform sharp debridement with a scalpel under this section or a health care provider who is authorized to perform wound care management, including sharp debridement with a scalpel, in his or her scope of practice. Both the two thousand hours in clinical practice and the fifteen hours of mentored training in a clinical setting must include a case mix similar to the occupational therapist's expected practice.

(ii) Certification as a certified hand therapist by the hand therapy certification commission or as a wound care specialist by the national alliance of wound care or equivalent organization approved by the board is sufficient to meet the requirements of (b)(i) of this subsection.

(c) The board shall develop an affidavit form for the purposes of (b) of this subsection. [2011 c 88 § 3.]

Rules—2011 c 88: "The board of occupational therapy practice and the department of health are authorized to create rules necessary to implement this act." [2011 c 88 § 4.]

Chapter 18.64 RCW PHARMACISTS

Sections

18.64.001	State board of pharmacy—Creation—Membership—Oath—Vacancies.
18.64.050	Duplicate for lost or destroyed license or certificate—Certified documents—Fees.
18.64.255	Authorized practices.

18.64.001 State board of pharmacy—Creation—Membership—Oath—Vacancies. There shall be a state board of pharmacy consisting of seven members, to be appointed by the governor by and with the advice and consent of the senate. Five of the members shall be designated as pharmacist members and two of the members shall be designated a public member.

Each pharmacist member shall be a citizen of the United States and a resident of this state, and at the time of his or her appointment shall have been a duly registered pharmacist under the laws of this state for a period of at least five consecutive years immediately preceding his or her appointment and shall at all times during his or her incumbency continue to be a duly licensed pharmacist: PROVIDED, That subject

to the availability of qualified candidates the governor shall appoint pharmacist members representative of the areas of practice and geographically representative of the state of Washington.

The public member shall be a citizen of the United States and a resident of this state. The public member shall be appointed from the public at large, but shall not be affiliated with any aspect of pharmacy.

Members of the board shall hold office for a term of four years, and the terms shall be staggered so that the terms of office of not more than two members will expire simultaneously on the third Monday in January of each year.

No person who has been appointed to and served for two four year terms shall be eligible for appointment to the board.

Each member shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his or her appointment and until his or her successor is appointed and qualified.

In case of the resignation or disqualification of a member, or a vacancy occurring from any cause, the governor shall appoint a successor for the unexpired term. [2011 c 336 § 493; 1984 c 153 § 1; 1981 c 338 § 17; 1973 1st ex.s. c 18 § 1; 1963 c 38 § 16; 1935 c 98 § 1; RRS § 10132. Formerly RCW 43.69.010.]

18.64.050 Duplicate for lost or destroyed license or certificate—Certified documents—Fees. In the event that a license or certificate issued by the department is lost or destroyed, the person to whom it was issued may obtain a duplicate thereof upon furnishing proof of such fact satisfactory to the department and the payment of a fee determined by the secretary.

In the event any person desires any certified document to which he or she is entitled, he or she shall receive the same upon payment of a fee determined by the secretary. [2011 c 336 § 494; 1989 1st ex.s. c 9 § 419; 1984 c 153 § 9; 1963 c 38 § 6; 1935 c 98 § 9; RRS § 10145-1. FORMER PART OF SECTION: 1935 c 98 § 10; RRS § 10145-2, now codified as RCW 18.64.055.]

Additional notes found at www.leg.wa.gov

18.64.255 Authorized practices. Nothing in this chapter shall operate in any manner:

(1) To restrict the scope of authorized practice of any practitioner other than a pharmacist, duly licensed as such under the laws of this state. However, a health care entity shall comply with all state and federal laws and rules relating to the dispensing of drugs and the practice of pharmacy; or

(2) In the absence of the pharmacist from the hospital pharmacy, to prohibit a registered nurse designated by the hospital and the responsible pharmacist from obtaining from the hospital pharmacy such drugs as are needed in an emergency: PROVIDED, That proper record is kept of such emergency, including the date, time, name of prescriber, the name of the nurse obtaining the drugs, and a list of what drugs and quantities of same were obtained; or

(3) To prevent shopkeepers, itinerant vendors, peddlers, or salespersons from dealing in and selling nonprescription drugs, if such drugs are sold in the original packages of the

manufacturer, or in packages put up by a licensed pharmacist in the manner provided by the state board of pharmacy, if such shopkeeper, itinerant vendor, salesperson, or peddler shall have obtained a registration. [2011 c 336 § 495; 1995 c 319 § 7; 1984 c 153 § 14; 1981 c 147 § 3; 1979 c 90 § 19.]

Chapter 18.64A RCW PHARMACY ASSISTANTS

Sections

- 18.64A.020 Rules—Qualifications and training programs.
18.64A.025 Qualifications—Military training and experience.

18.64A.020 Rules—Qualifications and training programs. (1)(a) The board shall adopt, in accordance with chapter 34.05 RCW, rules fixing the classification and qualifications and the educational and training requirements for persons who may be employed as pharmacy technicians or who may be enrolled in any pharmacy technician training program. Such rules shall provide that:

(i) Licensed pharmacists shall supervise the training of pharmacy technicians;

(ii) Training programs shall assure the competence of pharmacy technicians to aid and assist pharmacy operations. Training programs shall consist of instruction and/or practical training; and

(iii) Pharmacy technicians shall complete continuing education requirements established in rule by the board.

(b) Such rules may include successful completion of examinations for applicants for pharmacy technician certificates. If such examination rules are adopted, the board shall prepare or determine the nature of, and supervise the grading of the examinations. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

(2) The board may disapprove or revoke approval of any training program for failure to conform to board rules. In the case of the disapproval or revocation of approval of a training program by the board, a hearing shall be conducted in accordance with RCW 18.64.160, and appeal may be taken in accordance with the administrative procedure act, chapter 34.05 RCW. [2011 c 71 § 1; 1997 c 417 § 2; 1995 c 198 § 8; 1977 ex.s. c 101 § 2.]

18.64A.025 Qualifications—Military training and experience. An applicant with military training or experience satisfies the training and experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 5.]

Chapter 18.71 RCW PHYSICIANS

Sections

- 18.71.011 Definition of practice of medicine—Engaging in practice of chiropractic prohibited, when.
18.71.051 Application—Eligibility requirements—Foreign graduates.
18.71.080 License renewal—Human trafficking information—Continuing education requirement—Failure to renew, procedure.
18.71.220 Rendering emergency care—Immunity of physician or hospital from civil liability.

18.71.430 Pilot project—Commission—Authority over budget. (*Effective January 1, 2012.*)

18.71.011 Definition of practice of medicine—Engaging in practice of chiropractic prohibited, when. A person is practicing medicine if he or she does one or more of the following:

(1) Offers or undertakes to diagnose, cure, advise, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality;

(2) Administers or prescribes drugs or medicinal preparations to be used by any other person;

(3) Severs or penetrates the tissues of human beings;

(4) Uses on cards, books, papers, signs, or other written or printed means of giving information to the public, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human disease or conditions the designation "doctor of medicine," "physician," "surgeon," "m.d.," or any combination thereof unless such designation additionally contains the description of another branch of the healing arts for which a person has a license: PROVIDED HOWEVER, That a person licensed under this chapter shall not engage in the practice of chiropractic as defined in RCW 18.25.005. [2011 c 336 § 496; 1975 1st ex.s. c 171 § 15.]

18.71.051 Application—Eligibility requirements—Foreign graduates. Applicants for licensure to practice medicine who have graduated from a school of medicine located outside of the states, territories, and possessions of the United States, the District of Columbia, or the Dominion of Canada, shall file an application for licensure with the commission on a form prepared by the secretary with the approval of the commission. Each applicant shall furnish proof satisfactory to the commission of the following:

(1) That he or she has completed in a school of medicine a resident course of professional instruction equivalent to that required in this chapter for applicants generally;

(2)(a) Except as provided in (b) of this subsection, that he or she meets all the requirements which must be met by graduates of the United States and Canadian school of medicine except that he or she need not have graduated from a school of medicine approved by the commission;

(b) An applicant for licensure under this section is not required to meet the requirements of RCW 18.71.050(1)(b) if he or she furnishes proof satisfactory to the commission that he or she has:

(i)(A) Been admitted as a permanent immigrant to the United States as a person of exceptional ability in sciences pursuant to the rules of the United States department of labor; or

(B) Been issued a permanent immigration visa; and

(ii) Received multiple sclerosis certified specialist status from the consortium of multiple sclerosis centers; and

(iii) Successfully completed at least twenty-four months of training in multiple sclerosis at an educational institution in the United States with an accredited residency program in neurology or rehabilitation;

(3) That he or she has satisfactorily passed the examination given by the educational council for foreign medical

graduates or has met the requirements in lieu thereof as set forth in rules adopted by the commission;

(4) That he or she has the ability to read, write, speak, understand, and be understood in the English language. [2011 c 138 § 1; 1994 sp.s. c 9 § 308; 1991 c 3 § 162; 1975 1st ex.s. c 171 § 16.]

Additional notes found at www.leg.wa.gov

18.71.080 License renewal—Human trafficking information—Continuing education requirement—Failure to renew, procedure. (1)(a) Every person licensed to practice medicine in this state shall pay licensing fees and renew his or her license in accordance with administrative procedures and administrative requirements adopted as provided in RCW 43.70.250 and 43.70.280.

(b) The commission shall request licensees to submit information about their current professional practice at the time of license renewal. This information may include practice setting, medical specialty, board certification, or other relevant data determined by the commission.

(c) A physician who resides and practices in Washington and obtains or renews a retired active license shall be exempt from licensing fees imposed under this section. The commission may establish rules governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. The rules shall provide that mandatory continuing education requirements may be met in part by physicians showing evidence of the completion of approved activities relating to professional liability risk management. The number of hours of continuing education for a physician holding a retired active license shall not exceed fifty hours per year.

(2) The office of crime victims advocacy shall supply the commission with information on methods of recognizing victims of human trafficking, what services are available for these victims, and where to report potential trafficking situations. The information supplied must be culturally sensitive and must include information relating to minor victims. The commission shall disseminate this information to licensees by: Providing the information on the commission's web site; including the information in newsletters; holding trainings at meetings attended by organization members; or another distribution method determined by the commission. The commission shall report to the office of crime victims advocacy on the method or methods it uses to distribute information under this subsection.

(3) The commission, in its sole discretion, may permit an applicant who has not renewed his or her license to be licensed without examination if it is satisfied that such applicant meets all the requirements for licensure in this state, and is competent to engage in the practice of medicine. [2011 c 178 § 1. Prior: 2009 c 492 § 5; 2009 c 403 § 2; 1996 c 191 § 52; 1994 sp.s. c 9 § 312; prior: 1991 c 195 § 1; 1991 c 3 § 163; 1985 c 322 § 4; prior: 1979 c 158 §§ 53, 54, 55; 1975 1st ex.s. c 171 § 11; 1971 ex.s. c 266 § 12; 1955 c 202 § 36; prior: 1941 c 166 § 1, part; 1913 c 82 § 1, part; 1909 c 192 § 7, part; Rem. Supp. 1941 § 10010-1, part.]

Finding—Intent—2009 c 403: "The legislature finds that increasing the number of retired physicians who provide volunteer health care services is a cost-effective way to improve access to health care for many citizens of this state. Physicians holding a retired active license must currently meet

many of the same requirements as physicians in active practice, including at least fifty hours of continuing education a year, despite the fact that retired active physicians may only practice a maximum of ninety days a year, are limited to providing primary care services, and are limited to providing such services only in community clinics that are operated by public or private tax-exempt corporations. This presents both financial and practical barriers for retired physicians who wish to provide health care services on a volunteer basis, barriers that are not as stringent in other states that provide similar licenses for retired physicians. It is therefore the intent of the legislature to ease some of these barriers in a manner that does not adversely affect public safety." [2009 c 403 § 1.]

Additional notes found at www.leg.wa.gov

18.71.220 Rendering emergency care—Immunity of physician or hospital from civil liability. No physician or hospital licensed in this state shall be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital, or health services to any individual regardless of age where its patient is unable to give his or her consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care: PROVIDED, That such physician or hospital has acted in good faith and without knowledge of facts negating consent. [2011 c 336 § 497; 1971 ex.s. c 305 § 4.]

Immunity from liability for certain types of medical care: RCW 4.24.300.

18.71.430 Pilot project—Commission—Authority over budget. (Effective January 1, 2012.) (1) The commission shall conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. The pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to its professions, physicians regulated under this chapter and physician assistants regulated under chapter 18.71A RCW; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary author-

ity of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under RCW 18.79.390, 18.25.210, and 18.32.765, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement. [2011 c 60 § 7; 2008 c 134 § 29.]

Effective date—2011 c 60: See RCW 42.17A.919.

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

**Chapter 18.71A RCW
PHYSICIAN ASSISTANTS**

Sections

- 18.71A.020 Rules fixing qualifications and restricting practice—Applications—Discipline—Payment of funds.
18.71A.023 Practice requirements—Military training or experience.

18.71A.020 Rules fixing qualifications and restricting practice—Applications—Discipline—Payment of funds. (1) The commission shall adopt rules fixing the qualifications and the educational and training requirements for licensure as a physician assistant or for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the commission and within one year successfully take and pass an examination approved by the commission, if the examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program. An interim permit may be granted by the department of health for one year provided the applicant meets all other requirements. Physician assistants licensed by the board of medical examiners, or the medical quality assurance commission as of July 1, 1999, shall continue to be licensed.

(2)(a) The commission shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and

(ii) Physician assistants may practice after successful completion of a physician assistant training course.

(b) Such rules shall provide:

(i) That the practice of a physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each physician assistant shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician or physicians at the place where services are rendered.

(3) Applicants for licensure shall file an application with the commission on a form prepared by the secretary with the approval of the commission, detailing the education, training, and experience of the physician assistant and such other information as the commission may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. A surcharge of fifty dollars per year shall be charged on each license renewal or issuance of a new license to be collected by the department and deposited into the impaired physician account for physician assistant participation in the impaired physician program. Each applicant shall furnish proof satisfactory to the commission of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the commission and is eligible to take the examination approved by the commission;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing medicine as a physician assistant with reasonable skill and safety. The commission may require an applicant to submit to such examination or examinations as it

deems necessary to determine an applicant's physical or mental capability, or both, to safely practice as a physician assistant.

(4)(a) The commission may approve, deny, or take other disciplinary action upon the application for license as provided in the Uniform Disciplinary Act, chapter 18.130 RCW.

(b) The license shall be renewed as determined under RCW 43.70.250 and 43.70.280. The commission shall request licensees to submit information about their current professional practice at the time of license renewal. This information may include practice setting, medical specialty, or other relevant data determined by the commission.

(c) The commission may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

(5) All funds in the impaired physician account shall be paid to the contract entity within sixty days of deposit. [2011 c 178 § 2; 2009 c 98 § 2; 1999 c 127 § 1; 1998 c 132 § 14; 1996 c 191 § 57; 1994 sp.s. c 9 § 319; 1993 c 28 § 5; 1992 c 28 § 2; 1990 c 196 § 2; 1971 ex.s. c 30 § 2.]

Finding—Intent—Severability—1998 c 132: See notes following RCW 18.71.0195.

Additional notes found at www.leg.wa.gov

18.71A.023 Practice requirements—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the commission determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 6.]

Chapter 18.73 RCW

**EMERGENCY MEDICAL CARE AND
TRANSPORTATION SERVICES**

Sections

- 18.73.155 Requirements—Military training or experience.

18.73.155 Requirements—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 7.]

Chapter 18.74 RCW

PHYSICAL THERAPY

Sections

- 18.74.033 Qualifications—Military training and experience.
18.74.125 Construction of chapter—Activities not prohibited—Use of letters or words in connection with name.

18.74.033 Qualifications—Military training and experience. An applicant with military training or experience satisfies the training and experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 8.]

18.74.125 Construction of chapter—Activities not prohibited—Use of letters or words in connection with name. Nothing in this chapter shall prohibit any person licensed in this state under any other act from engaging in the practice for which he or she is licensed. Nothing in this chapter shall prohibit any person who, at any time prior to January 1, 1961, was practicing any healing or manipulative art in the state of Washington and designating the same as physical therapy or physiotherapy, from continuing to do so after the passage of this amendatory act: PROVIDED, That no such person shall represent himself or herself as being registered and shall not use in connection with his or her name the words or letters "registered" or "licensed" or "R.P.T." [2011 c 336 § 498; 1961 c 64 § 10.]

Reviser's note: The language "after the passage of this amendatory act" refers to chapter 64, Laws of 1961 which passed the House March 1, 1961, passed the Senate February 27, 1961, approved by the governor March 6, 1961, and became effective at midnight June 7, 1961.

Chapter 18.79 RCW NURSING CARE

Sections

18.79.390 Pilot project—Commission—Authority over budget. (*Effective January 1, 2012.*)

18.79.390 Pilot project—Commission—Authority over budget. (*Effective January 1, 2012.*) (1) The commission shall conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. The pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to advanced registered nurses, registered nurses, and licensed practical nurses regulated under this chapter; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other

actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under RCW 18.71.430, 18.25.210, and 18.32.765, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement. [2011 c 60 § 8; 2008 c 134 § 30.]

Effective date—2011 c 60: See RCW 42.17A.919.

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Chapter 18.84 RCW
RADIOLOGIC TECHNOLOGISTS

Sections

18.84.095 Certification—Military training or experience.

18.84.095 Certification—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 9.]

Chapter 18.85 RCW
REAL ESTATE BROKERS AND
MANAGING BROKERS

Sections

18.85.490 Military training or experience.

18.85.490 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 6.]

Chapter 18.88A RCW
NURSING ASSISTANTS

Sections

18.88A.088 Certification—Military training or experience.

18.88A.088 Certification—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the commission determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 10.]

Chapter 18.88B RCW
LONG-TERM CARE WORKERS

Sections

18.88B.020 Certification requirements.
18.88B.030 Certification examinations.
18.88B.040 Exemptions from training requirements.
18.88B.050 Disciplinary action—Uncertified practice.

18.88B.020 Certification requirements. (1) Effective January 1, 2014, except as provided in RCW 18.88B.040, the department of health shall require that any person hired as a long-term care worker for the elderly or persons with disabilities must be certified as a home care aide within one hundred fifty days from the date of being hired.

(2) Except as provided in RCW 18.88B.040, certification as a home care aide requires both completion of seventy-five hours of training and successful completion of a certification examination pursuant to RCW 74.39A.073 and 18.88B.030.

(3) No person may practice or, by use of any title or description, represent himself or herself as a certified home care aide without being certified pursuant to this chapter.

(4) The department of health shall adopt rules by August 1, 2013, to implement this section. [2011 1st sp.s. c 31 § 1; 2009 c 580 § 18; 2009 c 2 § 4 (Initiative Measure No. 1029, approved November 4, 2008).]

Effective date—2011 1st sp.s. c 31: "Except for sections 6, 10, and 14 through 17 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011]." [2011 1st sp.s. c 31 § 18.]

Intent—Findings—2009 c 2 (Initiative Measure No. 1029): "It is the intent of the people through this initiative to protect the safety of and improve the quality of care to the vulnerable elderly and persons with disabilities.

The people find and declare that current procedures to train and educate long-term care workers and to protect the elderly or persons with disabilities from caregivers with a criminal background are insufficient. The people find and declare that long-term care workers for the elderly or persons with disabilities should have a federal criminal background check and a formal system of education and experiential qualifications leading to a certification test.

The people find that the quality of long-term care services for the elderly and persons with disabilities is dependent upon the competency of the workers who provide those services. To assure and enhance the quality of long-term care services for the elderly and persons with disabilities, the people recognize the need for federal criminal background checks and increased training requirements. Their establishment should protect the vulnerable elderly and persons with disabilities, bring about a more stabilized workforce, improve the quality of long-term care services, and provide a valuable resource for recruitment into long-term care services for the elderly and persons with disabilities." [2009 c 2 § 1 (Initiative Measure No. 1029, approved November 4, 2008).]

Construction—2009 c 2 (Initiative Measure No. 1029): "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2009 c 2 § 19 (Initiative Measure No. 1029, approved November 4, 2008).]

Severability—2009 c 2 (Initiative Measure No. 1029): "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2009 c 2 § 20 (Initiative Measure No. 1029, approved November 4, 2008).]

Short title—2009 c 2 (Initiative Measure No. 1029): "This act may be known and cited as the better background checks and improved training for long-term care workers for the elderly and persons with disabilities initiative of 2008." [2009 c 2 § 21 (Initiative Measure No. 1029, approved November 4, 2008).]

Continuing education requirements: RCW 74.39A.340.

Criminal history checks on long-term care workers: RCW 74.39A.055.

Nursing assistant reciprocity: RCW 18.88A.087.

Training requirements: RCW 74.39A.073.

18.88B.030 Certification examinations. (1) Effective January 1, 2014, except as provided in RCW 18.88B.040, the department of health shall require that all long-term care workers successfully complete a certification examination. Any long-term care worker failing to make the required grade for the examination will not be certified as a home care aide.

(2) The department of health, in consultation with consumer and worker representatives, shall develop a home care aide certification examination to evaluate whether an applicant possesses the skills and knowledge necessary to practice competently. Unless excluded by RCW 18.88B.040 (1) and (2), only those who have completed the training requirements in RCW 74.39A.073 shall be eligible to sit for this examination.

(3) The examination shall include both a skills demonstration and a written or oral knowledge test. The examination papers, all grading of the papers, and records related to the grading of skills demonstration shall be preserved for a period of not less than one year. The department of health shall establish rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.

(4) All examinations shall be conducted by fair and wholly impartial methods. The certification examination shall be administered and evaluated by the department of health or by a contractor to the department of health that is neither an employer of long-term care workers or private contractors providing training services under this chapter.

(5) The department of health has the authority to:

(a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;

(b) Hire clerical, administrative, and investigative staff as needed to implement this section;

(c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination;

(d) Maintain the official record of all applicants and persons with certificates;

(e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and

(f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements for certification.

(6) The department of health shall adopt rules by August 1, 2013, that establish the procedures, including criteria for reviewing an applicant's state and federal background checks, and examinations necessary to carry this section into effect. [2011 1st sp.s. c 31 § 2; 2009 c 580 § 4; 2009 c 2 § 6 (Initiative Measure No. 1029, approved November 4, 2008).]

Effective date—2011 1st sp.s. c 31: See note following RCW 18.88B.020.

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

18.88B.040 Exemptions from training requirements.

The following long-term care workers are not required to become a certified home care aide pursuant to this chapter.

(1) Registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved training program for certified nursing assistants under chapter 18.88A RCW, medicare-certified home health aides, or other persons who hold a similar health credential, as determined by the secretary of health, or persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010, if the secretary of health determines that the circumstances do not require certification. After December 31, 2013, individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in RCW 74.39A.073 but must successfully complete a certification examination pursuant to RCW 18.88B.030.

(2) A person already employed as a long-term care worker prior to January 1, 2014, who completes all of his or

her training requirements in effect as of the date he or she was hired, is not required to obtain certification. After December 31, 2013, individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in RCW 74.39A.073 but must successfully complete a certification examination pursuant to RCW 18.88B.030.

(3) All long-term care workers employed by supported living providers are not required to obtain certification under this chapter.

(4) An individual provider caring only for his or her biological, step, or adoptive child or parent is not required to obtain certification under this chapter.

(5) A long-term care worker exempted by this section from the training requirements contained in RCW 74.39A.073 may not be prohibited from enrolling in training pursuant to that section.

(6) The department of health shall adopt rules by August 1, 2013, to implement this section. [2011 1st sp.s. c 31 § 3; 2010 c 169 § 11; 2009 c 580 § 15; 2009 c 2 § 7 (Initiative Measure No. 1029, approved November 4, 2008).]

Effective date—2011 1st sp.s. c 31: See note following RCW 18.88B.020.

Conflict with federal requirements—2010 c 169: See note following RCW 18.88A.010.

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Training requirements for individual providers caring for family members: RCW 74.39A.075.

18.88B.050 Disciplinary action—Uncertified practice. (1) The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, issuance of certificates, and the discipline of persons with certificates under this chapter. The secretary of health shall be the disciplinary authority under this chapter.

(2) The secretary of health may take action to immediately suspend the certification of a long-term care worker upon finding that conduct of the long-term care worker has caused or presents an imminent threat of harm to a functionally disabled person in his or her care.

(3) If the secretary of health imposes suspension or conditions for continuation of certification, the suspension or conditions for continuation are effective immediately upon notice and shall continue in effect pending the outcome of any hearing.

(4) The department of health shall take appropriate enforcement action related to the licensure of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under this chapter or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to this chapter.

(5) Chapter 34.05 RCW shall govern actions by the department of health under this section.

(6) The department of health shall adopt rules by August 1, 2013, to implement this section. [2011 1st sp.s. c 31 § 4; 2009 c 580 § 17; 2009 c 2 § 13 (Initiative Measure No. 1029, approved November 4, 2008).]

Effective date—2011 1st sp.s. c 31: See note following RCW 18.88B.020.

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Enforcement actions: RCW 74.39A.085.

Chapter 18.89 RCW

RESPIRATORY CARE PRACTITIONERS

Sections

18.89.020	Definitions.
18.89.040	Scope of practice.
18.89.095	Licensure—Qualifications—Military training or experience.

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

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

(2) "Health care practitioner" means:

(a) A physician licensed under chapter 18.71 RCW;

(b) An osteopathic physician or surgeon licensed under chapter 18.57 RCW; or

(c) Acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW, an advanced registered nurse practitioner licensed under chapter 18.79 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A RCW, or an osteopathic physician assistant licensed under chapter 18.57A RCW.

(3) "Respiratory care practitioner" means an individual licensed under this chapter.

(4) "Secretary" means the secretary of health or the secretary's designee. [2011 c 235 § 1; 1997 c 334 § 3; 1994 sp.s. c 9 § 511; 1991 c 3 § 227; 1987 c 415 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

18.89.040 Scope of practice. (1) A respiratory care practitioner licensed under this chapter is employed in the treatment, management, diagnostic testing, rehabilitation, and care of patients with deficiencies and abnormalities which affect the cardiopulmonary system and associated aspects of other systems, and is under the direct order and under the qualified medical direction of a health care practitioner. The practice of respiratory care includes:

(a) The use and administration of prescribed medical gases, exclusive of general anesthesia;

(b) The use of air and oxygen administering apparatus;

(c) The use of humidification and aerosols;

(d) The administration, to the extent of training, as determined by the secretary, of prescribed pharmacologic agents related to respiratory care;

(e) The use of mechanical ventilatory, hyperbaric, and physiological support;

(f) Postural drainage, chest percussion, and vibration;

(g) Bronchopulmonary hygiene;

(h) Cardiopulmonary resuscitation as it pertains to advanced cardiac life support or pediatric advanced life support guidelines;

(i) The maintenance of natural and artificial airways and insertion, without cutting tissues, of artificial airways, as prescribed by a health care practitioner;

(j) Diagnostic and monitoring techniques such as the collection and measurement of cardiorespiratory specimens, volumes, pressures, and flows;

(k) The insertion of devices to draw, analyze, infuse, or monitor pressure in arterial, capillary, or venous blood as prescribed by a health care practitioner; and

(l) Diagnostic monitoring of and therapeutic interventions for desaturation, ventilatory patterns, and related sleep abnormalities to aid the health care practitioner in diagnosis. This subsection does not prohibit any person from performing sleep monitoring tasks as set forth in this subsection under the supervision or direction of a licensed health care provider.

(2) Nothing in this chapter prohibits or restricts:

(a) The practice of a profession by individuals who are licensed under other laws of this state who are performing services within their authorized scope of practice, that may overlap the services provided by respiratory care practitioners;

(b) The practice of respiratory care by an individual employed by the government of the United States while the individual is engaged in the performance of duties prescribed for him or her by the laws and rules of the United States;

(c) The practice of respiratory care by a person pursuing a supervised course of study leading to a degree or certificate in respiratory care as a part of an accredited and approved educational program, if the person is designated by a title that clearly indicates his or her status as a student or trainee and limited to the extent of demonstrated proficiency of completed curriculum, and under direct supervision;

(d) The use of the title "respiratory care practitioner" by registered nurses authorized under chapter 18.79 RCW; or

(e) The practice without compensation of respiratory care of a family member.

Nothing in this chapter shall be construed to require that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person licensed under this chapter. [2011 c 235 § 2; 1999 c 84 § 1; 1997 c 334 § 4; 1994 sp.s. c 9 § 716; 1987 c 415 § 5.]

Additional notes found at www.leg.wa.gov

18.89.095 Licensure—Qualifications—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 11.]

Chapter 18.92 RCW

VETERINARY MEDICINE, SURGERY, AND DENTISTRY

Sections

18.92.115	Reexamination—Fee.
18.92.150	License—Display.

18.92.115 Reexamination—Fee. Any applicant who shall fail to secure the required grade in his or her first examination may take the next regular veterinary examination. The fee for reexamination shall be determined by the secretary as provided in RCW 43.70.250. [2011 c 336 § 499; 1991 c 3 § 244; 1985 c 7 § 71; 1975 1st ex.s. c 30 § 82; 1967 ex.s. c 50 § 7; 1959 c 92 § 8; 1941 c 71 § 10; Rem. Supp. 1941 § 10040-10. Prior: 1907 c 124 § 17. Formerly RCW 18.92.090, part.]

18.92.150 License—Display. Every person holding a license under the provisions of this chapter shall conspicuously display it in his or her principal place of business, together with the annual renewal license certificate. [2011 c 336 § 500; 1941 c 71 § 18; Rem. Supp. 1941 § 10040-18.]

Chapter 18.96 RCW LANDSCAPE ARCHITECTS

Sections

- 18.96.040 Licensure board for landscape architects—Members—Qualifications.
18.96.230 Military training or experience.

18.96.040 Licensure board for landscape architects—Members—Qualifications. (1)(a) There is created a licensure board for landscape architects consisting of five members appointed by the governor.

(b) Four members shall be licensed landscape architects who are residents of the state and have at least eight years' experience in the practice of landscape architecture as registered or licensed landscape architects in responsible charge of landscape architectural work or responsible charge of landscape architectural teaching. One member shall be a public member, who is not and has never been a registered or licensed landscape architect and who does not employ and is not employed by or professionally or financially associated with a landscape architect.

(c) The term of each newly appointed member shall be six years.

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

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

(3) The board shall elect a chair, a vice chair, and a secretary. The secretary may delegate his or her authority to the executive director.

(4) Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2011 c 336 § 501; 2009 c 370 § 5; 1993 c 35 § 1; 1985 c 18 § 1; 1969 ex.s. c 158 § 4.]

Effective date—2009 c 370 §§ 1-16, 18, 20, and 21: See note following RCW 18.96.010.

Finding—2009 c 370: See note following RCW 18.96.010.

Additional notes found at www.leg.wa.gov

18.96.230 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 7.]

Chapter 18.100 RCW

PROFESSIONAL SERVICE CORPORATIONS

Sections

- 18.100.070 Professional relationships and liabilities preserved.
18.100.140 Improper conduct not authorized.

18.100.070 Professional relationships and liabilities preserved. Nothing contained in this chapter shall be interpreted to abolish, repeal, modify, restrict, or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and the standards for professional conduct. Any director, officer, shareholder, agent, or employee of a corporation organized under this chapter shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or her or by any person under his or her direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable for any negligent or wrongful acts of misconduct committed by any of its directors, officers, shareholders, agents, or employees while they are engaged on behalf of the corporation, in the rendering of professional services. [2011 c 336 § 502; 1969 c 122 § 7.]

18.100.140 Improper conduct not authorized. Nothing in this chapter shall authorize a director, officer, shareholder, agent, or employee of a corporation organized under this chapter, or a corporation itself organized under this chapter, to do or perform any act which would be illegal, unethical, or unauthorized conduct under the provisions of the following acts: (1) Physicians and surgeons, chapter 18.71 RCW; (2) anti-rebating act, chapter 19.68 RCW; (3) state bar act, chapter 2.48 RCW; (4) professional accounting act, chapter 18.04 RCW; (5) professional architects act, chapter 18.08 RCW; (6) professional auctioneers act, chapter 18.11 RCW; (7) cosmetologists, barbers, and manicurists, chapter 18.16 RCW; (8) boarding homes act, chapter 18.20 RCW; (9) podiatric medicine and surgery, chapter 18.22 RCW; (10) chiropractic act, chapter 18.25 RCW; (11) registration of contractors, chapter 18.27 RCW; (12) debt adjusting act, chapter 18.28 RCW; (13) dental hygienist act, chapter 18.29 RCW; (14) dentistry, chapter 18.32 RCW; (15) dispensing opticians, chapter 18.34 RCW; (16) naturopathic physicians, chapter 18.36A RCW; (17) embalmers and funeral directors, chapter 18.39 RCW; (18) engineers and land surveyors, chapter 18.43 RCW; (19) escrow agents registration act, chapter 18.44 RCW; (20) birthing centers, chapter 18.46 RCW; (21) midwifery, chapter 18.50 RCW; (22) nursing homes, chapter 18.51 RCW; (23) optometry, chapter 18.53 RCW; (24) osteopathic physicians and surgeons, chapter 18.57 RCW; (25) pharmacists, chapter 18.64 RCW; (26)

physical therapy, chapter 18.74 RCW; (27) registered nurses, advanced registered nurse practitioners, and practical nurses, chapter 18.79 RCW; (28) psychologists, chapter 18.83 RCW; (29) real estate brokers and salespersons, chapter 18.85 RCW; (30) veterinarians, chapter 18.92 RCW. [2011 c 336 § 503; 1994 sp.s. c 9 § 717; 1987 c 447 § 16; 1982 c 35 § 170; 1969 c 122 § 14.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

Additional notes found at www.leg.wa.gov

Chapter 18.104 RCW

WATER WELL CONSTRUCTION

Sections

18.104.020 Definitions.

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

(1) "Abandoned well" means a well that is unmaintained or is in such disrepair that it is unusable or is a risk to public health and welfare.

(2) "Constructing a well" or "construct a well" means:

(a) Boring, digging, drilling, or excavating a well;

(b) Installing casing, sheeting, lining, or well screens, in a well;

(c) Drilling a geotechnical soil boring; or

(d) Installing an environmental investigation well.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

(3) "Decommission" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.

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

(5) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert groundwater for the purpose of facilitating construction, stabilizing a landslide, or protecting an aquifer.

(6) "Director" means the director of the department of ecology.

(7) "Environmental investigation well" means a cased hole intended or used to extract a sample or samples of groundwater, vapor, or soil from an underground formation and which is decommissioned immediately after the sample or samples are obtained. An environmental investigation well is typically installed using direct push technology or auger boring and uses the probe, stem, auger, or rod as casing. An environmental investigation well is not a geotechnical soil boring.

(8) "Geotechnical soil boring" or "boring" means a well drilled for the purpose of obtaining soil samples or information to ascertain structural properties of the subsurface.

(9) "Ground source heat pump boring" means a vertical boring constructed for the purpose of installing a closed loop heat exchange system for a ground source heat pump.

(10) "Grounding well" means a grounding electrode installed in the earth by the use of drilling equipment to prevent buildup of voltages that may result in undue hazards to

persons or equipment. Examples are anode and cathode protection wells.

(11) "Groundwater" means and includes groundwaters as defined in RCW 90.44.035.

(12) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes borehole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

(13) "Monitoring well" means a well designed to obtain a representative groundwater sample or designed to measure the water level elevation in either clean or contaminated water or soil.

(14) "Observation well" means a well designed to measure the depth to the water level elevation in either clean or contaminated water or soil.

(15) "Operator" means a person who (a) is employed by a well contractor; (b) is licensed under this chapter; or (c) who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

(16) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation, association, other entity, or any combination of these, who owns the property on which the well is or will be constructed or has the right to the well by means of an easement, covenant, or other enforceable legal instrument for the purpose of benefiting from the well.

(17) "Pollution" and "contamination" have the meanings provided in RCW 90.48.020.

(18) "Remediation well" means a well intended or used to withdraw groundwater or inject water, air (for air sparging), or other solutions into the subsurface for the purpose of remediating, cleaning up, or controlling potential or actual groundwater contamination.

(19) "Resource protection well" means a cased boring intended or used to collect subsurface information or to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, remediation wells, environmental investigation wells, vapor extraction wells, ground source heat pump boring, grounding wells, and instrumentation wells.

(20) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

(21) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering, or withdrawal of groundwater. "Water wells" include ground source heat pump borings and grounding wells.

(22) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

(23)(a) "Well" means water wells, resource protection wells, dewatering wells, and geotechnical soil borings.

(b) Well does not mean an excavation made for the purpose of:

(i) Obtaining or prospecting for oil, natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products;

(ii) Siting and constructing an on-site sewage disposal system as defined in RCW 70.118.020 or a large on-site sewage system as defined in RCW 70.118B.010; or

(iii) Inserting any device or instrument less than ten feet in depth into the soil for the sole purpose of performing soil or water testing or analysis or establishing soil moisture content as long as there is no withdrawal of water in any quantity other than as necessary to perform the intended testing or analysis.

(24) "Well contractor" means a resource protection well contractor and a water well contractor licensed and bonded under chapter 18.27 RCW. [2011 c 196 § 1; 2005 c 84 § 1; 2002 c 48 § 1; 2000 c 171 § 26; 1993 c 387 § 2; 1983 1st ex.s. c 27 § 14; 1971 ex.s. c 212 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Chapter 18.106 RCW PLUMBERS

Sections

18.106.030	Application for certificate of competency—Medical gas piping installer endorsement—Evidence required.
18.106.080	Persons engaged in plumbing business or trade on effective date.
18.106.100	Revocation of certificate of competency—Grounds—Procedure.
18.106.110	Advisory board of plumbers.
18.106.130	Plumbing certificate fund.
18.106.140	Powers and duties of director.
18.106.180	Notice of infraction—Issuance, service.

18.106.030 Application for certificate of competency—Medical gas piping installer endorsement—Evidence required. Any person desiring to be issued a certificate of competency as provided in this chapter shall deliver evidence in a form prescribed by the department affirming that said person has had sufficient experience in as well as demonstrated general competency in the trade of plumbing or specialty plumbing so as to qualify him or her to make an application for a certificate of competency as a journeyman plumber or specialty plumber. Completion of a course of study in the plumbing trade in the armed services of the United States or at a school accredited by the workforce training and education coordinating board shall constitute sufficient evidence of experience and competency to enable such person to make application for a certificate of competency.

Any person desiring to be issued a medical gas piping installer endorsement shall deliver evidence in a form prescribed by the department affirming that the person has met the requirements established by the department for a medical gas piping installer endorsement.

In addition to supplying the evidence as prescribed in this section, each applicant for a certificate of competency shall submit an application for such certificate on such form and in such manner as shall be prescribed by the director of the department. [2011 c 336 § 504; 1997 c 326 § 4; 1977 ex.s. c 149 § 3; 1973 1st ex.s. c 175 § 3.]

Additional notes found at www.leg.wa.gov

18.106.080 Persons engaged in plumbing business or trade on effective date. No examination shall be required of any applicant for a certificate of competency who, on July 16, 1973, was engaged in a bona fide business or trade of plumbing, or on said date held a valid journeyman plumber's license issued by a political subdivision of the state of Washington and whose license is valid at the time of making his or her application for said certificate. Applicants qualifying under this section shall be issued a certificate by the department upon making an application as provided in RCW 18.106.030 and paying the fee required under RCW 18.106.050: PROVIDED, That no applicant under this section shall be required to furnish such evidence as required by RCW 18.106.030. [2011 c 336 § 505; 1973 1st ex.s. c 175 § 8.]

18.106.100 Revocation of certificate of competency—Grounds—Procedure. (1) The department may revoke or suspend a certificate of competency for any of the following reasons:

- (a) The certificate was obtained through error or fraud;
- (b) The certificate holder is judged to be incompetent to carry on the trade of plumbing as a journeyman plumber or specialty plumber;
- (c) The certificate holder has violated any provision of this chapter or any rule adopted under this chapter.

(2) Before a certificate of competency is revoked or suspended, the department shall send written notice using a method by which the mailing can be tracked or the delivery can be confirmed to the certificate holder's last known address. The notice must list the allegations against the certificate holder and give him or her the opportunity to request a hearing before the advisory board. At the hearing, the department and the certificate holder have opportunity to produce witnesses and give testimony. The hearing must be conducted in accordance with chapter 34.05 RCW. The board shall render its decision based upon the testimony and evidence presented and shall notify the parties immediately upon reaching its decision. A majority of the board is necessary to render a decision.

(3) The department may deny renewal of a certificate of competency issued under this chapter if the applicant owes outstanding penalties for a final judgment under this chapter. The department shall notify the applicant of the denial using a method by which the mailing can be tracked or the delivery can be confirmed to the address on the application. The applicant may appeal the denial within twenty days by filing a notice of appeal with the department accompanied by a certified check for two hundred dollars which shall be returned to the applicant if the decision of the department is not upheld by the hearings officer. The office of administrative hearings shall conduct the hearing under chapter 34.05 RCW. If the hearings officer sustains the decision of the department, the two hundred dollars must be applied to the cost of the hearing. [2011 c 301 § 4; 1996 c 147 § 3; 1977 ex.s. c 149 § 9; 1973 1st ex.s. c 175 § 10.]

18.106.110 Advisory board of plumbers. (1) There is created a state advisory board of plumbers, to be composed of

seven members appointed by the director. Two members shall be journeyman plumbers, one member shall be a specialty plumber, three members shall be persons conducting a plumbing business, at least one of which shall be primarily engaged in a specialty plumbing business, and one member from the general public who is familiar with the business and trade of plumbing.

(2) The term of one journeyman plumber expires July 1, 1995; the term of the second journeyman plumber expires July 1, 2000; the term of the specialty plumber expires July 1, 2008; the term of one person conducting a plumbing business expires July 1, 1996; the term of the second person conducting a plumbing business expires July 1, 2000; the term of the third person conducting a plumbing business expires July 1, 2007; and the term of the public member expires July 1, 1997. Thereafter, upon the expiration of said terms, the director shall appoint a new member to serve for a period of three years. However, to ensure that the board can continue to act, a member whose term expires shall continue to serve until his or her replacement is appointed. In the case of any vacancy on the board for any reason, the director shall appoint a new member to serve out the term of the person whose position has become vacant.

(3) The advisory board shall carry out all the functions and duties enumerated in this chapter, as well as generally advise the department on all matters relative to this chapter.

(4) Each member of the advisory board shall receive travel expenses in accordance with the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day in which such member is actually engaged in attendance upon the meetings of the advisory board. [2011 1st sp.s. c 21 § 21; 2006 c 185 § 4; 1997 c 307 § 1; 1995 c 95 § 1; 1975-'76 2nd ex.s. c 34 § 56; 1973 1st ex.s. c 175 § 11.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

18.106.130 Plumbing certificate fund. All moneys received from certificates, permits, or other sources, shall be paid to the state treasurer as ex officio custodian thereof and by him or her placed in a special fund designated as the "plumbing certificate fund." He or she shall pay out upon vouchers duly and regularly issued therefor and approved by the director. The treasurer shall keep an accurate record of payments into said fund, and of all disbursement therefrom. Said fund shall be charged with its pro rata share of the cost of administering said fund. [2011 c 336 § 506; 1973 1st ex.s. c 175 § 13.]

18.106.140 Powers and duties of director. The director may promulgate rules, make specific decisions, orders, and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of his or her duties under this chapter: PROVIDED, That in the administration of this chapter the director shall not enter any controversy arising over work assignments with respect to the trades involved in the construction industry. [2011 c 336 § 507; 1973 1st ex.s. c 175 § 14.]

18.106.180 Notice of infraction—Issuance, service.

(1) An authorized representative of the department may issue a notice of infraction as specified in RCW 18.106.020 if:

(a) A person who is doing plumbing work or who is offering to do plumbing work fails to produce evidence of:

(i) Having a certificate or permit issued by the department in accordance with this chapter, or being supervised by a person who has such a certificate or permit; and

(ii) Being registered as a contractor as required under chapter 18.27 RCW or this chapter, or being employed by a person who is registered as a contractor;

(b) A person who employs anyone, or offers or advertises to employ anyone, to do plumbing work fails to produce evidence of being registered as a contractor as required under chapter 18.27 RCW or this chapter; or

(c) A contractor violates RCW 18.106.320.

(2) A notice of infraction issued under this section shall be personally served on the person named in the notice by an authorized representative of the department or sent using a method by which the mailing can be tracked or the delivery can be confirmed to the last known address provided to the department of the person named in the notice. [2011 c 301 § 5; 2002 c 82 § 3; 2000 c 171 § 27; 1996 c 147 § 4; 1994 c 174 § 3; 1983 c 124 § 7.]

Additional notes found at www.leg.wa.gov

Chapter 18.108 RCW

MESSAGE PRACTITIONERS

Sections

- 18.108.040 Advertising—Use of title.
- 18.108.045 Display of license.

18.108.040 Advertising—Use of title. (1) It shall be unlawful to advertise the practice of massage using the term massage or any other term that implies a massage technique or method in any public or private publication or communication by a person not licensed by the secretary as a massage practitioner.

(2) Any person who holds a license to practice as a massage practitioner in this state may use the title "licensed massage practitioner" and the abbreviation "L.M.P.". No other persons may assume such title or use such abbreviation or any other word, letters, signs, or figures to indicate that the person using the title is a licensed massage practitioner.

(3) A massage practitioner's name and license number must conspicuously appear on all of the massage practitioner's advertisements. [2011 c 223 § 1; 1995 c 353 § 1; 1991 c 3 § 255; 1987 c 443 § 4; 1975 1st ex.s. c 280 § 4.]

18.108.045 Display of license. A massage practitioner licensed under this chapter must conspicuously display his or her license in his or her principal place of business. If the massage practitioner does not have a principal place of business or conducts business in any other location, he or she must have a copy of his or her license available for inspection while performing any activities related to massage therapy. [2011 c 223 § 2.]

Chapter 18.130 RCW

REGULATION OF HEALTH PROFESSIONS—
UNIFORM DISCIPLINARY ACT

Sections

- 18.130.040 Application to certain professions—Authority of secretary—
Grant or denial of licenses—Procedural rules.
18.130.057 Disciplinary authority—Duties—Documents.

18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

- (i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;
- (ii) Midwives licensed under chapter 18.50 RCW;
- (iii) Ocularists licensed under chapter 18.55 RCW;
- (iv) Massage operators and businesses licensed under chapter 18.108 RCW;
- (v) Dental hygienists licensed under chapter 18.29 RCW;
- (vi) East Asian medicine practitioners licensed under chapter 18.06 RCW;
- (vii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
- (viii) Respiratory care practitioners licensed under chapter 18.89 RCW;
- (ix) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;
- (x) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—-independent clinical under chapter 18.225 RCW;
- (xi) Persons registered as nursing pool operators under chapter 18.52C RCW;
- (xii) Nursing assistants registered or certified under chapter 18.88A RCW;
- (xiii) Health care assistants certified under chapter 18.135 RCW;
- (xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;
- (xv) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;
- (xvi) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;
- (xvii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;
- (xviii) Denturists licensed under chapter 18.30 RCW;
- (xix) Orthotists and prosthetists licensed under chapter 18.200 RCW;
- (xx) Surgical technologists registered under chapter 18.215 RCW;

- (xxi) Recreational therapists;
- (xxii) Animal massage practitioners certified under chapter 18.240 RCW;
- (xxiii) Athletic trainers licensed under chapter 18.250 RCW;
- (xxiv) Home care aides certified under chapter 18.88B RCW; and
- (xxv) Genetic counselors licensed under chapter 18.290 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

- (i) The podiatric medical board as established in chapter 18.22 RCW;
 - (ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;
 - (iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;
 - (iv) The board of hearing and speech as established in chapter 18.35 RCW;
 - (v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;
 - (vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;
 - (vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;
 - (viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;
 - (ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;
 - (x) The board of physical therapy as established in chapter 18.74 RCW;
 - (xi) The board of occupational therapy practice as established in chapter 18.59 RCW;
 - (xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;
 - (xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;
 - (xiv) The veterinary board of governors as established in chapter 18.92 RCW; and
 - (xv) The board of naturopathy established in chapter 18.36A RCW.
- (3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.
- (4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section. [2011 c 41 § 11. Prior: 2010 c 286 § 18; (2010 c 286 § 17 expired August 1, 2010); (2010 c 286 § 16 expired July 1, 2010); 2010 c 65 § 3; (2010 c 65 § 2 expired August 1, 2010); (2010 c 65 § 1 expired July 1, 2010); prior: 2009 c 302 § 14; 2009 c 301 § 8; 2009 c 52 § 2; 2009 c 52 § 1; 2009 c 2 § 16 (Initiative Measure No. 1029, approved November 4, 2008); 2008 c 134 § 18; (2008 c 134

§ 17 expired July 1, 2008); prior: 2007 c 269 § 17; 2007 c 253 § 13; 2007 c 70 § 11; 2004 c 38 § 2; prior: 2003 c 275 § 2; 2003 c 258 § 7; prior: 2002 c 223 § 6; 2002 c 216 § 11; 2001 c 251 § 27; 1999 c 335 § 10; 1998 c 243 § 16; prior: 1997 c 392 § 516; 1997 c 334 § 14; 1997 c 285 § 13; 1997 c 275 § 2; prior: 1996 c 200 § 32; 1996 c 81 § 5; prior: 1995 c 336 § 2; 1995 c 323 § 16; 1995 c 260 § 11; 1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

Effective date—2010 c 286 § 18: "Section 18 of this act takes effect August 1, 2010." [2010 c 286 § 22.]

Expiration date—2010 c 286 § 17: "Section 17 of this act expires August 1, 2010." [2010 c 286 § 21.]

Effective date—2010 c 286 § 17: "Section 17 of this act takes effect July 1, 2010." [2010 c 286 § 20.]

Expiration date—2010 c 286 § 16: "Section 16 of this act expires July 1, 2010." [2010 c 286 § 19.]

Intent—2010 c 286: See RCW 18.06.005.

Effective date—2010 c 65 § 3: "Section 3 of this act takes effect August 1, 2010." [2010 c 65 § 9.]

Expiration date—2010 c 65 § 2: "Section 2 of this act expires August 1, 2010." [2010 c 65 § 8.]

Effective date—2010 c 65 § 2: "Section 2 of this act takes effect July 1, 2010." [2010 c 65 § 7.]

Expiration date—2010 c 65 § 1: "Section 1 of this act expires July 1, 2010." [2010 c 65 § 6.]

Effective date—Implementation—2009 c 302: See RCW 18.290.900 and 18.290.901.

Intent—Implementation—2009 c 301: See notes following RCW 18.35.010.

Speech-language pathology assistants—Certification requirements—2009 c 301: See note following RCW 18.35.040.

Effective date—2009 c 52 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 52 § 3.]

Effective date—2009 c 52 § 2: "Section 2 of this act takes effect July 1, 2010." [2009 c 52 § 4.]

Contingent effective date—2009 c 2 (Initiative Measure No. 1029) § 16: "Section 16 of this act takes effect if section 18, chapter 134, Laws of 2008 is signed into law by April 6, 2008." [2009 c 2 § 24 (Initiative Measure No. 1029, approved November 4, 2008).]

Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029): See notes following RCW 18.88B.020.

Effective date—2008 c 134 § 18: "Section 18 of this act takes effect July 1, 2008." [2008 c 134 § 37.]

Expiration date—2008 c 134 § 17: "Section 17 of this act expires July 1, 2008." [2008 c 134 § 36.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

Application—Implementation—2007 c 269: See RCW 18.260.900 and 18.260.901.

Severability—Effective date—Implementation—2007 c 253: See RCW 18.250.900 through 18.250.902.

Effective date—2004 c 38: See note following RCW 18.155.075.

Effective date—2003 c 275 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 275 § 4.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

Severability—Effective date—2002 c 216: See RCW 18.230.900 and 18.230.901.

Severability—2001 c 251: See RCW 18.225.900.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Intent—Purpose—1997 c 285: See RCW 18.200.005.

Additional notes found at www.leg.wa.gov

18.130.057 Disciplinary authority—Duties—Documents. (1) A disciplining authority shall provide a person or entity making a complaint or report under RCW 18.130.080 with a reasonable opportunity to supplement or amend the contents of the complaint or report. The license holder must be provided an opportunity to respond to any supplemental or amended complaint or report. The disciplining authority shall promptly respond to inquiries made by the license holder or the person or entity making a complaint or report regarding the status of the complaint or report.

(2)(a) Pursuant to chapter 42.56 RCW, following completion of an investigation or closure of a report or complaint, the disciplining authority shall, upon request, provide the license holder or the person or entity making the complaint or report with a copy of the file relating to the complaint or report, including, but not limited to, any response submitted by the license holder under RCW 18.130.095(1).

(b) The disciplining authority may not disclose documents in the file that:

(i) Contain confidential or privileged information regarding a patient other than the person making the complaint or report; or

(ii) Contain information exempt from public inspection and copying under chapter 42.56 RCW.

(c) The exemptions in (b) of this subsection are inapplicable to the extent that the relevant information can be deleted from the documents in question.

(d) The disciplining authority may impose a reasonable charge for copying the file consistent with the charges allowed for copying public records under RCW 42.56.120.

(3)(a) Prior to any final decision on any disciplinary proceeding before a disciplining authority, the disciplining authority shall provide the person submitting the complaint or report or his or her representative, if any, an opportunity to be heard through an oral or written impact statement about the effect of the person's injury on the person and his or her family and on a recommended sanction.

(b) If the license holder is not present at the disciplinary proceeding, the disciplining authority shall transmit the impact statement to the license holder, who shall certify to the disciplining authority that he or she has received it.

(c) For purposes of this subsection, representatives of the person submitting the complaint or report include his or her family members and such other affected parties as may be designated by the disciplining authority upon request.

(4) A disciplining authority shall inform, in writing, the license holder and person or entity submitting the complaint or report of the final disposition of the complaint or report.

(5)(a) If the disciplining authority closes a complaint or report prior to issuing a statement of charges under RCW 18.130.090 or a statement of allegations under RCW 18.130.172, the person or entity submitting the report may,

within thirty days of receiving notice under subsection (4) of this section, request the disciplining authority to reconsider the closure of the complaint or report on the basis of new information relating to the original complaint or report. A request for reconsideration made under this subsection may only be brought in relation to the original complaint and may only be brought one time.

(b) The disciplining authority shall, within thirty days of receiving the request for reconsideration, notify the license holder of the request and the new information providing the basis therefor. The license holder has thirty days to provide a response. The disciplining authority shall notify the person or entity and the license holder in writing of its final decision on the request for reconsideration, including an explanation of the reasoning behind the decision. [2011 c 157 § 1.]

Chapter 18.135 RCW HEALTH CARE ASSISTANTS

Sections

- 18.135.035 Requirements for certification—Military training or experience.
18.135.130 Administration of drugs. (*Expires July 1, 2013.*)

18.135.035 Requirements for certification—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 12.]

18.135.130 Administration of drugs. (*Expires July 1, 2013.*) (1) This section applies only to health care assistants certified in categories C or E by the department of health.

(2)(a) The administration of drugs by a health care assistant is restricted to oral, topical, rectal, otic, ophthalmic, or inhaled routes administered pursuant to a written order of a supervising health care practitioner. The drugs authorized for administration under this section are limited to the following:

(i) Over-the-counter drugs that may be administered to a patient while in the care of a health care practitioner are: Benadryl, acetaminophen, ibuprofen, aspirin, neosporin, polysporin, normal saline, colace, kenalog, and hydrocortisone cream;

(ii) Nonover-the-counter unit dose legend drugs that may be administered to a patient while in the care of a health care practitioner are: Kenalog, hydrocortisone cream, reglan, compazine, zofran, bactroban, albuterol, xopenex, silvadene, gastrointestinal cocktail, fluoride, lmx cream, emla, lat, optic dyes, oral contrast, and oxygen.

(b) Health care assistants authorized to administer certain over-the-counter and legend drugs under this section must demonstrate initial and ongoing competency to administer specific drugs as determined by the health care practitioner.

(3) A health care practitioner must administer a medication if:

(a) A patient is unable to physically ingest or safely apply a medication independently or with assistance; or

(b) A patient is unable to indicate an awareness that he or she is taking a medication.

(4) This section expires July 1, 2013. [2011 c 70 § 1; 2009 c 43 § 3.]

Rules—2011 c 70: "The department of health shall adopt any rules necessary to implement this act." [2011 c 70 § 2.]

Intent—2009 c 43: See note following RCW 18.135.010.

Chapter 18.140 RCW CERTIFIED REAL ESTATE APPRAISER ACT

Sections

- 18.140.230 Real estate appraiser commission—Establishment—Composition.
18.140.290 Military training or experience.

18.140.230 Real estate appraiser commission—Establishment—Composition. There is established the real estate appraiser commission of the state of Washington, consisting of seven members who shall act to give advice to the director.

(1) The seven commission members shall be appointed by the director in the following manner: For a term of six years each, with the exception of the first appointees who shall be the incumbent members of the predecessor real estate appraiser advisory committee to serve for the duration of their current terms, with all other subsequent appointees to be appointed for a six-year term.

(2) At least two of the commission members shall be selected from the area of the state east of the Cascade mountain range and at least two of the commission members shall be selected from the area of the state west of the Cascade mountain range. At least two members of the commission shall be certified general real estate appraisers, at least two members of the commission shall be certified residential real estate appraisers, and at least one member of the commission may be a licensed real estate appraiser, all pursuant to this chapter. No certified or licensed appraiser commission member shall be appointed who has not been certified and/or licensed pursuant to this chapter for less than ten years, except that this experience duration shall be not less than five years only for any commission member taking office before January 1, 2003. One member shall be an employee of a financial institution as defined in this chapter whose duties are concerned with real estate appraisal management and policy. One member shall be an individual engaged in mass appraisal whose duties are concerned with ad valorem appraisal management and policy and who is licensed or certified under this chapter. One member may be a member of the general public.

(3) The members of the commission annually shall elect their chairperson and vice chairperson to serve for a term of one calendar year. A majority of the members of said commission shall at all times constitute a quorum.

(4) Any vacancy on the commission shall be filled by appointment by the director for the unexpired term. [2011 1st sp.s. c 21 § 44; 2005 c 339 § 19; 2000 c 249 § 3.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

18.140.290 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director

determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 8.]

Chapter 18.145 RCW

COURT REPORTING PRACTICE ACT

Sections

18.145.150 Military training or experience.

18.145.150 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 9.]

Chapter 18.160 RCW

FIRE SPRINKLER SYSTEM CONTRACTORS

Sections

18.160.050 Renewal—Certificate of competency—Contractor license—Fire protection contractor license fund created.

18.160.050 Renewal—Certificate of competency—Contractor license—Fire protection contractor license fund created. (1)(a) All certificate of competency holders that desire to continue in the fire protection sprinkler business shall annually, prior to January 1st, secure from the state director of fire protection a renewal certificate of competency upon payment of the fee as prescribed by the state director of fire protection. Application for renewal shall be upon a form prescribed by the state director of fire protection and the certificate holder shall furnish the information required by the director.

(b) Failure of any certificate of competency holder to secure his or her renewal certificate of competency within sixty days after the due date shall constitute sufficient cause for the state director of fire protection to suspend the certificate of competency.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a certificate of competency that has been suspended for failure to pay the renewal fee.

(d) A certificate of competency holder may voluntarily surrender his or her certificate of competency to the state director of fire protection and be relieved of the annual renewal fee. After surrendering the certificate of competency, he or she shall not be known as a certificate of competency holder and shall desist from the practice thereof. Within two years from the time of surrender of the certificate of competency, he or she may again qualify for a certificate of competency, without examination, by the payment of the required fee. If two or more years have elapsed, he or she shall return to the status of a new applicant.

(2)(a) All licensed fire protection sprinkler system contractors desiring to continue to be licensed shall annually, prior to January 1st, secure from the state director of fire protection a renewal license upon payment of the fee as prescribed by the state director of fire protection. Application

for renewal shall be upon a form prescribed by the state director of fire protection and the license holder shall furnish the information required by the director.

(b) Failure of any license holder to secure his or her renewal license within sixty days after the due date shall constitute sufficient cause for the state director of fire protection to suspend the license.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a license that has been suspended for failure to pay the renewal fee.

(3) The initial certificate of competency or license fee shall be prorated based upon the portion of the year such certificate of competency or license is in effect, prior to renewal on January 1st.

(4) The fire protection contractor license fund is created in the custody of the state treasurer. All receipts from license and certificate fees and charges or from the money generated by the rules and regulations promulgated under this chapter shall be deposited into the fund. Expenditures from the fund may be used only for purposes authorized under this chapter and standards for fire protection and its enforcement, with respect to all hospitals as required by RCW 70.41.080; for providing assistance in identifying fire sprinkler system components that have been subject to either a recall or voluntary replacement program by a manufacturer of fire sprinkler products, a nationally recognized testing laboratory, or the federal consumer product safety commission; and for use in developing and publishing educational materials related to the effectiveness of residential fire sprinklers. Assistance shall include, but is not limited to, aiding in the identification of recalled components, information sharing strategies aimed at ensuring the consumer is made aware of recalls and voluntary replacement programs, and providing training and assistance to local fire authorities, the fire sprinkler industry, and the public. Only the state director of fire protection or the director's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2011 c 331 § 2; 2008 c 155 § 2; 2005 c 109 § 1; 1990 c 177 § 6.]

Intent—2011 c 331: See note following RCW 82.02.100.

Chapter 18.165 RCW

PRIVATE INVESTIGATORS

Sections

18.165.310 Military training or experience.

18.165.310 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 10.]

Chapter 18.170 RCW SECURITY GUARDS

Sections

18.170.310 Military training or experience.

18.170.310 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 11.]

Chapter 18.185 RCW BAIL BOND AGENTS

Sections

18.185.056 License suspension—Electronic benefit cards.

18.185.310 Military training or experience.

18.185.056 License suspension—Electronic benefit cards. The director shall immediately suspend any license issued under this chapter if the director receives information that the license holder has not complied with RCW 74.08.580(2). If the license holder has otherwise remained eligible to be licensed, the director may reinstate the suspended license when the holder has complied with RCW 74.08.580(2). [2011 1st sp.s. c 42 § 18.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

18.185.310 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 12.]

Chapter 18.210 RCW ON-SITE WASTEWATER TREATMENT SYSTEMS— DESIGNER LICENSING

Sections

18.210.010 Definitions.
18.210.020 Unprofessional conduct.
18.210.030 Support order—License suspension.
18.210.050 Director's authority.
18.210.080 Immunity.
18.210.090 Repealed.
18.210.100 Written examination—Minimum requirements.
18.210.120 Application for licensure—References—Fees.
18.210.140 Renewal—Renewal fee—Penalty fee.
18.210.160 Prohibited practices—Penalty.
18.210.170 Professional development.
18.210.180 Foreign jurisdiction—License without examination.
18.210.190 Local health jurisdictions—Certificate of competency—Fee.
18.210.210 Repealed.
18.210.230 Military training or experience.

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

[2011 RCW Supp—page 324]

(1) "Board" means the board of registration for professional engineers and land surveyors as defined in chapter 18.43 RCW.

(2) "Certificate of competency" or "certificate" means a certificate issued to employees of local health jurisdictions indicating that the certificate holder has passed the licensing examination required under this chapter.

(3) "Designer" or "licensee" means an individual authorized under this chapter to perform design services for on-site wastewater treatment systems.

(4) "Director" means the director of the Washington state department of licensing.

(5) "Engineer" means a professional engineer licensed under chapter 18.43 RCW.

(6) "License" means a license to design on-site wastewater treatment systems under this chapter.

(7) "Local health jurisdiction" or "jurisdictional health department" means an administrative agency created under chapter 70.05, 70.08, or 70.46 RCW, that administers the regulation and codes regarding on-site wastewater treatment systems.

(8) "On-site wastewater design" means the development of plans, details, specifications, instructions, or inspections by application of specialized knowledge in analysis of soils, on-site wastewater treatment systems, disposal methods, and technologies to create an integrated system of collection, transport, distribution, treatment, and disposal of on-site wastewater.

(9) "On-site wastewater treatment system" means an integrated system of components that: Convey, store, treat, and/or provide subsurface soil treatment and disposal of wastewater effluent on the property where it originates or on adjacent or other property and includes piping, treatment devices, other accessories, and soil underlying the disposal component of the initial and reserve areas, for on-site wastewater treatment under three thousand five hundred gallons per day when not connected to a public sewer system.

(10) "Practice of engineering" has the meaning set forth in RCW 18.43.020(5). [2011 c 256 § 1. Prior: 2010 1st sp.s. c 7 § 76; 1999 c 263 § 2.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

18.210.020 Unprofessional conduct. In addition to the unprofessional conduct described in RCW 18.235.130, the following conduct, acts, and conditions constitute unprofessional conduct:

(1) Practicing with a *practice permit or license issued under this chapter that is expired, suspended, or revoked;

(2) Being willfully untruthful or deceptive in any document, report, statement, testimony, or plan that pertains to the design or construction of an on-site wastewater treatment system;

(3) Submission of a design or as-built record to a local health jurisdiction, to the department of health, or to the department of ecology, that is knowingly based upon false, incorrect, misleading, or fabricated information; and

(4) Submission of any application for licensure or certification that contains false, fraudulent, or misleading information. [2011 c 256 § 2; 2002 c 86 § 256; 1999 c 263 § 3.]

***Reviser's note:** The definition of "practice permit" was deleted pursuant to 2011 c 256 § 1.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

18.210.030 Support order—License suspension. The board shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for a license under this chapter during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the child support order. The procedure in RCW 74.20A.320 is the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order, and suspension of a license under this section, and satisfies the requirements of RCW 34.05.422. [2011 c 256 § 3; 2002 c 86 § 257; 1999 c 263 § 4.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

18.210.050 Director's authority. The director may:

- (1) Employ administrative, clerical, and investigative staff as necessary to administer and enforce this chapter;
- (2) Establish fees for applications, examinations, and renewals in accordance with chapter 43.24 RCW;
- (3) Issue licenses to applicants who meet the requirements of this chapter; and
- (4) Exercise rule-making authority to implement this section. [2011 c 256 § 4; 2010 1st sp.s. c 7 § 77; 1999 c 263 § 6.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

18.210.080 Immunity. The director, members of the board, and individuals acting on behalf of the director or the board are immune to liability in any civil action or criminal case based on any acts performed in the course of their duties under this chapter, except for acts displaying intentional or willful misconduct. [2011 c 256 § 5; 1999 c 263 § 9.]

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

18.210.100 Written examination—Minimum requirements. All applicants for licensure under this chapter, except as provided in RCW 18.210.180, must pass a written examination administered by the board and must also meet the following minimum requirements:

- (1) A high school diploma or equivalent; and
- (2) A minimum of four years of experience, as approved by the board, showing increased responsibility for the design of on-site wastewater treatment systems. The experience should include site soil assessment, hydraulics, topographic delineations, use of specialized treatment processes and devices, microbiology, and construction practices. Comple-

tion of satisfactory college level coursework or successful participation in a board-approved internship or mentoring program may be substituted for up to two years of the experience requirement. [2011 c 256 § 6; 1999 c 263 § 11.]

18.210.120 Application for licensure—References—Fees. (1) Application for licensure must be on forms prescribed by the board and furnished by the director. The application must contain statements, made under oath, demonstrating the applicant's education and work experience.

(2) Applicants shall provide not less than two verifications of experience. Verifications of experience may be provided by licensed professional engineers, licensed on-site wastewater treatment system designers, or state/local regulatory officials in the on-site wastewater treatment field who have direct knowledge of the applicant's qualifications to practice in accordance with this chapter and who can verify the applicant's work experience.

(3) The director, as provided in RCW 43.24.086, shall determine an application fee for licensure as an on-site wastewater treatment system designer. A nonrefundable application fee must accompany the application. The director shall ensure that the application fee includes the cost of the examination and the cost issuance of a license and certificate. A candidate who fails an examination may apply for reexamination. The director shall determine the fee for reexamination. [2011 c 256 § 7; 1999 c 263 § 13.]

18.210.140 Renewal—Renewal fee—Penalty fee. (1) Licenses and certificates issued under this chapter are valid for a period of time as determined by the director and may be renewed under the conditions described in this chapter. An expired license or certificate is invalid and must be renewed. Any licensee or certificate holder who fails to pay the renewal fee within ninety days following the date of expiration shall be assessed a penalty fee as determined by the director and must pay the penalty fee and the base renewal fee before the license or certificate may be renewed.

(2) Any license issued under this chapter that is not renewed within two years of its date of expiration must be canceled. Following cancellation, a person seeking to renew must reapply as a new applicant under this chapter.

(3) The director, as provided in RCW 43.24.086, shall determine the fee for applications and for renewals of licenses and certificates issued under this chapter. For determining renewal fees, the pool of licensees and certificate holders under this chapter must be combined with the licensees established in chapter 18.43 RCW. [2011 c 256 § 8; 1999 c 263 § 15.]

18.210.160 Prohibited practices—Penalty. On or after July 1, 2003, it is a gross misdemeanor for any person, not otherwise exempt from the requirements of this chapter, to: (1) Perform on-site wastewater treatment systems design services without a license; (2) purport to be qualified to perform those services without having been issued a license under this chapter; (3) attempt to use the license or seal of another; (4) attempt to use a revoked or suspended license; or (5) attempt to use false or fraudulent credentials. In addition,

action may be taken under RCW 18.235.150. [2011 c 256 § 9; 2002 c 86 § 259; 1999 c 263 § 17.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

18.210.170 Professional development. The board shall require licensees under this chapter to maintain continuing professional development. The board may require these licensees to demonstrate maintenance of knowledge and skills as a condition of license renewal, including peer review of work products and periodic reexamination. [2011 c 256 § 10; 1999 c 263 § 18.]

18.210.180 Foreign jurisdiction—License without examination. Any person holding a license issued by a jurisdiction outside the state of Washington authorizing that person to perform design services for site soil assessment, hydraulics, topographic delineations, use of specialized treatment processes and devices, microbiology, and construction practices of on-site wastewater treatment systems may be granted a license without examination under this chapter, if:

(1) The education, experience, and/or examination forming the basis of the license is determined by the board to be equal to or greater than the conditions for the issuance of a license under this chapter; and

(2) The individual has paid the applicable fee and has submitted the necessary application form. [2011 c 256 § 11; 1999 c 263 § 19.]

18.210.190 Local health jurisdictions—Certificate of competency—Fee. (1) Employees of local health jurisdictions who review, inspect, or approve the design and construction of on-site wastewater treatment systems shall obtain a certificate of competency by obtaining a passing score on the written examination administered for licensure under this chapter. Eligibility to apply for the certificate of competency is based upon a written request from the local health director or designee and payment of a fee established by the director. The certificate of competency is renewable upon payment of a fee established by the director. Certificate holders are also subject to the requirements of RCW 18.210.140(1).

(2) Issuance of the certificate of competency does not authorize the certificate holder to offer or provide on-site wastewater treatment system design services. However, nothing in this chapter limits or affects the ability of local health jurisdictions to perform on-site design services under their authority in chapter 70.05 RCW.

(3) Local health jurisdictions and the state department of health retain authority to:

(a) Administer state and local regulations and codes for approval or disapproval of designs for on-site wastewater treatment systems;

(b) Issue permits for construction;

(c) Evaluate soils and site conditions for compliance with code requirements; and

(d) Perform on-site wastewater treatment design work as authorized in state and local board of health rules. [2011 c 256 § 12; 1999 c 263 § 20.]

[2011 RCW Supp—page 326]

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

18.210.230 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 13.]

Chapter 18.215 RCW

SURGICAL TECHNOLOGISTS

Sections

18.215.090 Registration requirements—Military training or experience.

18.215.090 Registration requirements—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 13.]

Chapter 18.220 RCW

GEOLOGISTS

Sections

18.220.211 Military training or experience.

18.220.211 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 14.]

Chapter 18.260 RCW

DENTAL PROFESSIONALS

Sections

18.260.065 Registration or licensing requirements—Military training or experience.

18.260.065 Registration or licensing requirements—Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the commission determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 32 § 14.]

Chapter 18.280 RCW

HOME INSPECTORS

Sections

18.280.040 Home inspector advisory licensing board.

18.280.200 Military training or experience.

18.280.040 Home inspector advisory licensing board.

(1) The state home inspector advisory licensing board is created. The board consists of seven members appointed by the director, who shall advise the director concerning the administration of this chapter. Of the appointments to this board, six must be actively engaged as home inspectors immediately prior to their appointment to the board, and one must be currently teaching in a home inspector education program. Insofar as possible, the composition of the appointed home inspector members of the board must be generally representative of the geographic distribution of home inspectors licensed under this chapter. No more than two board members may be members of a particular national home inspector association or organization.

(2) A home inspector must have the following qualifications to be appointed to the board:

(a) Actively engaged as a home inspector in the state of Washington for five years;

(b) Licensed as a home inspector under this chapter, except for initial appointments; and

(c) Performed a minimum of five hundred home inspections in the state of Washington.

(3) Members of the board are appointed for three-year terms. Terms must be staggered so that not more than two appointments are scheduled to be made in any calendar year. Members hold office until the expiration of the terms for which they were appointed. The director may remove a board member for just cause. The director may appoint a new member to fill a vacancy on the board for the remainder of the unexpired term. All board members are limited to two consecutive terms.

(4) Each board member is entitled to compensation for each day spent conducting official business and to reimbursement for travel expenses in accordance with RCW 43.03.240, 43.03.050, and 43.03.060. [2011 1st sp.s. c 21 § 43; 2008 c 119 § 4.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

18.280.200 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 15.]

Chapter 18.300 RCW**BODY ART, BODY PIERCING, AND TATTOOING**

Sections

18.300.095 License suspension—Electronic benefit cards.
18.300.160 Military training or experience.

18.300.095 License suspension—Electronic benefit cards. The department of licensing shall immediately suspend any license under this chapter if the department receives information that the license holder has not complied with RCW 74.08.580(2). If the license holder has remained otherwise eligible to be licensed, the department may reinstate the suspended license when the holder has complied with RCW 74.08.580(2). [2011 1st sp.s. c 42 § 17.]

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

18.300.160 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 16.]

Chapter 18.320 RCW**SOCIAL WORKERS**

Sections

18.320.005 Findings—2011 c 89. (*Effective January 1, 2012.*)
18.320.010 Representation as social worker. (*Effective January 1, 2012.*)
18.320.020 Application of consumer protection act. (*Effective January 1, 2012.*)

18.320.005 Findings—2011 c 89. (*Effective January 1, 2012.*) (1) The legislature finds that:

(a) The practice of social work by persons in the public and private sectors improves the lives of many people throughout the state through the application of a broad spectrum of social sciences to enhance the quality of life and develop the full potential of each client;

(b) The practice of social work is a complex discipline that, appropriately undertaken, can address client problems, needs, and concerns, with the goal that clients achieve the maximum possible enhancement of their quality of life and develop to their full potential. However, improper assessment of client problems and needs by unqualified persons can lead to client harm;

(c) It is in the state's interest to take steps to safeguard state residents from misrepresentations about qualifications for practicing social work. Because such misrepresentations could lead to the improper practice of social work by unqualified persons, those who represent themselves as social workers should have a qualifying degree from an accredited and approved social work program.

(2) The legislature declares that chapter 89, Laws of 2011 to regulate social workers constitutes an exercise of the state's police power to protect and promote the health, safety, and welfare of the residents of the state in general. Accordingly, while chapter 89, Laws of 2011 is intended to protect the public generally, it does not create a duty owed by the state or its instrumentalities to any individual or entity. [2011 c 89 § 1.]

Effective date—2011 c 89: "This act takes effect January 1, 2012." [2011 c 89 § 21.]

18.320.010 Representation as social worker. (*Effective January 1, 2012.*) (1) To address the goal of safeguarding Washington residents from the unqualified or improper practice of social work, a person may not represent himself or herself as a social worker unless qualified as a social worker as defined in this section.

(2) For purposes of this section, "social worker" means a person who meets one of the following qualifications:

(a) Is licensed under RCW 18.225.090(1)(a) or 18.225.145(1)(a); or

(b) Has graduated with at least a bachelor's degree from a social work educational program accredited by the council on social work education.

(3) A public agency or private entity doing business in Washington may not use the title of social worker, or a form of the title, for describing or designating volunteer or employment positions or within contracts for services, reference materials, manuals, or other documents, unless the volunteers or employees working in those positions are qualified as a social worker as defined in this section.

(4) This section does not apply to:

(a) Persons employed in Washington on January 1, 2012, under the job title of social worker so long as the person continues to be employed by the same agency as on January 1, 2012;

(b) Persons employed by the state of Washington on January 1, 2012, under the job title of social worker so long as the person continues to be employed by the state and who shall continue to have the same layoff, reversion, transfer, and promotional opportunities as were available to the employee on January 1, 2012;

(c) Individuals employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States; or

(d) Persons providing services as an educational staff associate who are certified by the Washington professional educator standards board. However, this section applies to a certified educational staff associate providing services outside the school setting.

(5) As used in subsection (4) of this section, "agency" means any private employer or any agency of state government. [2011 c 89 § 2.]

Effective date—2011 c 89: See note following RCW 18.320.005.

18.320.020 Application of consumer protection act. (Effective January 1, 2012.) (1) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) Remedies available under chapter 19.86 RCW for a violation of this chapter do not affect any other remedy available under the law. [2011 c 89 § 3.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Chapter 18.330 RCW

ELDER AND VULNERABLE ADULT REFERRAL AGENCY ACT

Sections

18.330.005	Findings. (Effective January 1, 2012.)
18.330.010	Definitions. (Effective January 1, 2012.)
18.330.020	Agency duties. (Effective January 1, 2012.)
18.330.030	Exemptions. (Effective January 1, 2012.)
18.330.040	Referral records—Agreement records. (Effective January 1, 2012.)

18.330.050	Referrals—Disclosure statement. (Effective January 1, 2012.)
18.330.060	Intake form. (Effective January 1, 2012.)
18.330.070	How referral is made—Contact with providers—Search for violations—Uniform standard for enforcement status. (Effective January 1, 2012.)
18.330.080	Fees charged to providers. (Effective January 1, 2012.)
18.330.090	Disclosure of fees and refund policies. (Effective January 1, 2012.)
18.330.100	Background checks—Disqualifying crimes and acts. (Effective January 1, 2012.)
18.330.110	Acceptance of fees—Compliance with chapter. (Effective January 1, 2012.)
18.330.120	Provisions exclusive—Local government licensing. (Effective January 1, 2012.)
18.330.130	When remuneration for referral not allowed. (Effective January 1, 2012.)
18.330.140	Application of consumer protection act. (Effective January 1, 2012.)
18.330.150	Liability of agencies. (Effective January 1, 2012.)
18.330.800	Work group—Licensure. (Effective January 1, 2012.)
18.330.900	Short title. (Effective January 1, 2012.)
18.330.901	Effective date—2011 c 357.

18.330.005 Findings. (Effective January 1, 2012.) (1)

The legislature finds that locating acceptable housing and appropriate care for vulnerable adults is an important aspect of providing an appropriate continuity of care for senior citizens.

(2) The legislature further finds that locating appropriate and quality housing alternatives sometimes depends on elder and vulnerable adult referral agencies attempting to assist with referral.

(3) The legislature further finds that vulnerable adult referral professionals should be required to meet certain minimum requirements to promote better integration of vulnerable adult housing choices.

(4) The legislature further finds that the requirement that elder and vulnerable adult referral agencies meet minimum standards of conduct is in the interest of public health, safety, and welfare. [2011 c 357 § 1.]

18.330.010 Definitions. (Effective January 1, 2012.)

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

(1) "Care services" means any combination of services, including in-home care, private duty care, or private duty nursing designed for or with the goal of allowing vulnerable adults to receive care and related services at home or in a home-like setting. Care service providers must include home health agencies and in-home service agencies licensed under chapter 70.127 RCW.

(2) "Client" means an elder person or a vulnerable adult, or his or her representative if any, seeking a referral or assistance with entering into an arrangement for supportive housing or care services in Washington state through an elder and vulnerable adult referral agency. For purposes of this chapter, the "client's representative" means the person authorized under RCW 7.70.065 or other laws to provide informed consent for an individual unable to do so. "Client" may also mean a person seeking a referral for supportive housing or care services on behalf of the elder person or vulnerable adult through an elder care referral service: PROVIDED, That such a person is a family member, relative, or domestic partner of the senior or vulnerable adult.

(3) "Elder and vulnerable adult referral agency" or "agency" means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care

services or supportive housing, or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

(4) "Fee" means anything of value. "Fee" includes money or other valuable consideration or services or the promise of money or other valuable consideration or services, received directly or indirectly by an elder and vulnerable adult referral agency.

(5) "Information" means the provision of general information by an agency to a person about the types of supportive housing or care services available in the area that may meet the needs of elderly or vulnerable adults without giving the person the names of specific providers of care services or supportive housing, or giving a provider the name of the person or vulnerable adult. Information also means the provision by an agency of the names of specific providers to a social worker, discharge planner, case manager, professional guardian, nurse, or other professional who is assisting a vulnerable adult locate supportive housing or care services, where the agency does not request or receive any fee.

(6) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, organization, service, office, or an agent or any of their employees.

(7) "Provider" means any entity or person that both provides supportive housing or care services to a vulnerable adult for a fee and provides or is required to provide such housing or services under a state or local business license specific to such housing or services.

(8) "Referral" means the act of an agency giving a client the name or names of specific providers of care services or supportive housing that may meet the needs of the vulnerable adult identified in the intake form described in RCW 18.330.060, or the agency gives a provider the name of a client for the purposes of enabling the provider to contact the client regarding care services or supportive housing provided by that provider.

(9) "Supportive housing" means any type of housing that includes services for care needs and is designed for prospective residents who are vulnerable adults. Supportive housing includes, but is not limited to, nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, adult family homes licensed under chapter 70.128 RCW, and continuing care retirement communities under RCW 70.38.025.

(10) "Vulnerable adult" has the same meaning as in RCW 74.34.020. [2011 c 357 § 2.]

18.330.020 Agency duties. (Effective January 1, 2012.) (1) As of January 1, 2012, a business or person operating or maintaining an agency in this state is subject to the provisions of this chapter. An agency must maintain general and professional liability insurance to cover the acts and services of the agency. The combined liability insurance coverage required is one million dollars.

(2) The agency may not create an exclusive agreement between the agency and the client, or between the agency and a provider. The agency cannot provide referral services to a client where the only names given to the client are of providers in which the agency or its personnel or immediate family

members have an ownership interest in those providers. An agreement entered into between an agency and a provider must allow either the provider or the agency to cancel the agreement with specific payment terms regarding pending fees or commissions outlined in the agreement.

(3) The marketing materials, informational brochures, and web sites owned or operated by an agency, and concerning information or referral services for elderly or vulnerable adults, must include a clear identification of the agency.

(4) All owners, operators, and employees of an agency shall be considered mandated reporters under the vulnerable adults act, chapter 74.34 RCW. No agency may develop or enforce any policies or procedures that interfere with the reporting requirements of chapter 74.34 RCW. [2011 c 357 § 3.]

18.330.030 Exemptions. (Effective January 1, 2012.) Nothing in this chapter may be construed to prohibit, restrict, or apply to:

(1) Any home health or hospice agency while providing counseling to patients on placement options in the normal course of practice;

(2) Government entities providing information and assistance to vulnerable adults unless making a referral in which a fee is received from a client;

(3) Professional guardians providing services under authority of their guardianship appointment;

(4) Supportive housing or care services providers who make referrals to other supportive housing or care services providers where no monetary value is exchanged;

(5) Social workers, discharge planners, or other social services staff assisting a vulnerable adult to define supportive housing or care services providers in the course of their employment responsibilities if they do not receive any monetary value from a provider; or

(6) Any person to the extent that he or she provides information to another person. [2011 c 357 § 4.]

18.330.040 Referral records—Agreement records. (Effective January 1, 2012.) (1) Each agency shall keep records of all referrals rendered to or on behalf of clients. These records must contain:

(a) The name of the vulnerable adult, and the address and phone number of the client or the client's representative, if any;

(b) The kind of supportive housing or care services for which referral was sought;

(c) The location of the care services or supportive housing referred to the client and probable duration, if known;

(d) The monthly or unit cost of the supportive housing or care services, if known;

(e) If applicable, the amount of the agency's fee to the client or to the provider;

(f) If applicable, the dates and amounts of refund of the agency's fee, if any, and reason for such refund; and

(g) A copy of the client's disclosure and intake forms described in RCW 18.330.050 and 18.330.060.

(2) Each agency shall also keep records of any contract or written agreement entered into with any provider for services rendered to or on behalf of a vulnerable adult, including

any referrals to a provider. Any provision in a contract or written agreement not consistent with this chapter is void and unenforceable.

(3) The agency must maintain the records covered by this chapter for a period of six years. The agency's records identifying a client are considered "health care information" and the provisions of chapter 70.02 RCW apply but only to the extent that such information meets the definition of "health care information" under RCW 70.02.010(7). The client must have access upon request to the agency's records concerning the client and covered by this chapter. [2011 c 357 § 5.]

18.330.050 Referrals—Disclosure statement. (Effective January 1, 2012.) (1) An agency must provide a disclosure statement to each client prior to making a referral. A disclosure statement is not required when the agency is only providing information to a person. The disclosure statement must be acknowledged by the client prior to the referral and the agency shall retain a copy of the disclosure statement and acknowledgment. Acknowledgment may be in the form of:

(a) A signature of the client or legal representative on the exact disclosure statement;

(b) An electronic signature that includes the date, time, internet provider address, and displays the exact disclosure statement document;

(c) A faxed confirmation that includes the date, time, and fax number and displaying the exact disclosure statement document; or

(d) In instances where a vulnerable adult chooses not to sign or otherwise provide acknowledgment of the disclosure statement, the referral professional or agency may satisfy the acknowledgment requirement of this subsection (1) by documenting the client's refusal to sign.

(2) The disclosure statement must be dated and must contain the following information:

(a) The name, address, and telephone number of the agency;

(b) The name of the client;

(c) The amount of the fee to be received from the client, if any. Alternatively, if the fee is to be received from the provider, the method of computation of the fee and the time and method of payment. In addition, the agency shall disclose to the client the amount of fee to be received from the provider, if the client requests such information;

(d) A clear description of the services provided by the agency in general, and to be provided specifically for the client;

(e) A provision stating that the agency may not require or request clients to sign waivers of potential liability for losses of personal property or injury, or to sign waivers of any rights of the client established in state or federal law;

(f) A provision stating that the agency works with both the client and the care services or supportive housing provider in the same transaction, and an explanation that the agency will need the client's authorization to obtain or disclose confidential health care information;

(g) A statement indicating the frequency on which the agency regularly tours provider facilities, and that, at the time of referral, the agency will inform the client in writing or by electronic means if the agency has toured the referred sup-

portive housing provider or providers, and if so, the most recent date that tour took place;

(h) A provision stating that the client may, without cause, stop using the agency or switch to another agency without penalty or cancellation fee to the client;

(i) An explanation of the agency's refund of fees policy, which must be consistent with RCW 18.330.090;

(j) A statement that the client may file a complaint with the attorney general's office for violations of this chapter, including the name, address, and telephone number of the consumer protection division of that office; and

(k) If the agency or its personnel who are directly involved in providing referrals to clients, including the personnel's immediate family members, have an ownership interest in the supportive housing or care services to which the client is given a referral, a provision stating that the agency or such personnel or their immediate family members have an ownership interest in the supportive housing or care services to which the client is given referral services, and, if such ownership interest exists, an explanation of that interest. [2011 c 357 § 6.]

18.330.060 Intake form. (Effective January 1, 2012.)

(1) The agency shall use a standardized intake form for all clients prior to making a referral. The intake form must, at a minimum, contain the following information regarding the vulnerable adult:

(a) Recent medical history, as relevant to the referral process;

(b) Known medications and medication management needs;

(c) Known medical diagnoses, health concerns, and the reasons the client is seeking supportive housing or care services;

(d) Significant known behaviors or symptoms that may cause concern or require special care;

(e) Mental illness, dementia, or developmental disability diagnosis, if any;

(f) Assistance needed for daily living;

(g) Particular cultural or language access needs and accommodations;

(h) Activity preferences;

(i) Sleeping habits of the vulnerable adult, if known;

(j) Basic information about the financial situation of the vulnerable adult and the availability of any long-term care insurance or financial assistance, including medicaid, which may be helpful in defining supportive housing and care services options for the vulnerable adult;

(k) Current living situation of the client;

(l) Geographic location preferences; and

(m) Preferences regarding other issues important to the client, such as food and daily routine.

(2) The agency shall obtain the intake information from the most available sources, such as from the client, the client's representative, or a health care professional, and shall allow the vulnerable adult to participate to the maximum extent possible.

(3) The agency may provide information to a person about the types of supportive housing or care services available in the area that may meet the needs of elderly or vulnerable adults without the need to complete an intake form or

provide a disclosure statement, if the agency does not make a referral or request or receive any fee. In addition, the agency may provide the names of specific providers to a social worker, discharge planner, case manager, professional guardian, nurse, or other professional who is assisting a vulnerable adult locate supportive housing or care services, provided the agency does not request or receive any fee. [2011 c 357 § 7.]

18.330.070 How referral is made—Contact with providers—Search for violations—Uniform standard for enforcement status. (Effective January 1, 2012.) (1) The agency may choose to provide a referral for the client by either giving the client the name or names of specific providers who may meet the needs of the vulnerable adult identified in the intake form or by giving a provider or providers the name of the client after obtaining the authorization of the client or the client's representative.

(2)(a) Prior to making a referral to a specific provider, the agency shall speak with a representative of the provider and obtain, at a minimum, the following general information, which must be dated and retained in the agency's records:

- (i) The type of license held by the provider and license number;
- (ii) Whether the provider is authorized by license to provide care to individuals with a mental illness, dementia, or developmental disability;
- (iii) Sources of payment accepted, including whether medicaid is accepted;
- (iv) General level of medication management services provided;
- (v) General level and types of personal care services provided;
- (vi) Particular cultural needs that may be accommodated;
- (vii) Primary language spoken by care providers;
- (viii) Activities typically provided;
- (ix) Behavioral problems or symptoms that can or cannot be met;
- (x) Food preferences and special diets that can be accommodated; and
- (xi) Other special care or services available.

(b) The agency shall update this information regarding the provider at least annually. To the extent practicable, referrals shall be made to providers who appear, in the best judgment of the agency, capable of meeting the vulnerable adult's identified needs.

(3) Prior to making a referral of a supportive housing provider, the agency shall conduct a search, and inform the client that a search was conducted, of the department of social and health service's web site to see if the provider is in enforcement status for violation of its licensing regulations. Prior to making a referral of a care services provider, the agency shall conduct a search, and inform the client that a search was conducted, of the department of health's web site to determine if the provider is in enforcement status for violation of its licensing regulations. The searches required by this subsection must be considered timely if done within thirty days before the referral. The information obtained by the agency from the searches must be disclosed in writing to the client if the referral includes that provider.

(4) By January 1, 2012, the department of social and health services and the department of health must convene a work group of stakeholders to collaboratively identify and implement a uniform standard for the information pertaining to the enforcement status of a provider that must be disclosed to the client under subsection (3) of this section. The uniform standard must clearly identify what elements of an enforcement action should be included under the disclosure requirements of subsection (3) of this section. Agencies will have no liability or responsibility for the accuracy, completeness, timeliness, or currency of information shared in the prescribed format and are immune from any cause of action arising from their reliance on, use of, or distribution of this information. [2011 c 357 § 8.]

18.330.080 Fees charged to providers. (Effective January 1, 2012.) Nothing in this chapter will limit, specify, or otherwise regulate the fees charged by an agency to a provider for a referral. [2011 c 357 § 9.]

18.330.090 Disclosure of fees and refund policies. (Effective January 1, 2012.) (1) The agency shall clearly disclose its fees and refund policies to clients and providers. If the agency receives a fee regarding a client who was provided referral services for supportive housing, and the vulnerable adult dies, is hospitalized, or is transferred to another supportive housing setting for more appropriate care within the first thirty days of admission, then the agency shall refund a portion of its fee to the person who paid it, whether that is the client or the supportive housing provider. The amount refunded must be a prorated portion of the agency's fees, based upon a per diem calculation for the days that the client resided or retained a bed in the supportive housing.

(2) A refund policy inconsistent with this section is void and unenforceable.

(3) This section does not limit the application of other remedies, including the consumer protection act, chapter 19.86 RCW. [2011 c 357 § 10.]

18.330.100 Background checks—Disqualifying crimes and acts. (Effective January 1, 2012.) Any employee, owner, or operator of an agency that works with vulnerable adults must pass a criminal background check every twenty-four months and not have been convicted of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or been found by a court of law or disciplinary authority to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult. [2011 c 357 § 11.]

18.330.110 Acceptance of fees—Compliance with chapter. (Effective January 1, 2012.) An agency may not charge or accept a fee or other consideration from a client, care services provider, or supportive housing provider unless the agency substantially complies with the terms of this chapter. [2011 c 357 § 12.]

18.330.120 Provisions exclusive—Local government licensing. (Effective January 1, 2012.) (1) The provisions of this chapter relating to the regulation of private elder and vulnerable adult referral agencies are exclusive.

(2) This chapter may not be construed to affect or reduce the authority of any political subdivision of the state of Washington to provide for the licensing of private elder and vulnerable adult referral agencies solely for revenue purposes. [2011 c 357 § 13.]

18.330.130 When remuneration for referral not allowed. (*Effective January 1, 2012.*) In accordance with RCW 74.09.240, the agency may not solicit or receive any remuneration directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under chapter 74.09 RCW. [2011 c 357 § 14.]

18.330.140 Application of consumer protection act. (*Effective January 1, 2012.*) The legislature finds that the operation of an agency in violation of this chapter is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2011 c 357 § 15.]

18.330.150 Liability of agencies. (*Effective January 1, 2012.*) Agencies and their employees, owners, and officers will not be considered providers and will not be liable or responsible for the acts or omissions of a provider. [2011 c 357 § 16.]

18.330.800 Work group—Licensure. (*Effective January 1, 2012.*) The department of licensing shall convene a work group of stakeholders to consider the feasibility of establishing licensure for elder and vulnerable adult referral agencies described in chapter 357, Laws of 2011. The work group will provide recommendations to the legislature by December 1, 2011. [2011 c 357 § 17.]

18.330.900 Short title. (*Effective January 1, 2012.*) This chapter may be known and cited as the "elder and vulnerable adult referral agency act." [2011 c 357 § 18.]

18.330.901 Effective date—2011 c 357. This act takes effect January 1, 2012. [2011 c 357 § 20.]

Title 19

BUSINESS REGULATIONS— MISCELLANEOUS

Chapters

- 19.02** Business license center act.
- 19.09** Charitable solicitations.
- 19.16** Collection agencies.
- 19.25** Reproduced sound recordings.
- 19.27** State building code.
- 19.27A** Energy-related building standards.
- 19.28** Electricians and electrical installations.
- 19.29** Electrical construction.
- 19.30** Farm labor contractors.

- 19.31** Employment agencies.
- 19.34** Washington electronic authentication act.
- 19.36** Contracts and credit agreements requiring writings.
- 19.48** Hotels, lodging houses, etc.—Restaurants.
- 19.52** Interest—Usury.
- 19.60** Pawnbrokers and secondhand dealers.
- 19.64** Radio broadcasting.
- 19.68** Rebating by practitioners of healing professions.
- 19.72** Suretyship.
- 19.77** Trademark registration.
- 19.80** Trade names.
- 19.83** Trading stamp licenses.
- 19.84** Trading stamps and premiums.
- 19.85** Regulatory fairness act.
- 19.86** Unfair business practices—Consumer protection.
- 19.94** Weights and measures.
- 19.100** Franchise investment protection.
- 19.105** Camping resorts.
- 19.110** Business opportunity fraud act.
- 19.112** Motor fuel quality act.
- 19.116** Motor vehicle subleasing or transfer.
- 19.118** Motor vehicle warranties.
- 19.120** Gasoline dealer bill of rights act.
- 19.122** Underground utilities.
- 19.146** Mortgage broker practices act.
- 19.154** Immigration services fraud prevention act.
- 19.170** Promotional advertising of prizes.
- 19.182** Fair credit reporting act.
- 19.230** Uniform money services act.
- 19.240** Gift certificates.
- 19.280** Electric utility resource plans.
- 19.330** Stolen or misappropriated information technology.

Chapter 19.02 RCW

BUSINESS LICENSE CENTER ACT

Sections

- 19.02.020 Definitions.
- 19.02.030 Business license center—Duties—Rules.
- 19.02.050 Participation of state agencies.
- 19.02.070 Issuance of licenses—Scope—Master application and fees—Action by regulatory agency, when—Agencies provided information.
- 19.02.075 Master application handling and renewal fees.
- 19.02.100 Master license—Issuance or renewal—Denial.
- 19.02.115 Licensing information—Authorized disclosure—Penalty.
- 19.02.800 Master license system—Certain business or professional activity licenses exempt.
- 19.02.900 Severability—1977 ex.s. c 319.
- 19.02.901 Decodified.
- 19.02.910 Decodified.

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

(1) "Business license center" means the business registration and licensing center established by this chapter and located in and under the administrative control of the department of revenue.

(2) "Department" means the department of revenue.

(3) "Director" means the director of revenue.

(4) "License" means the whole or part of any agency or local government permit, license, certificate, approval, regis-

tration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(5) "License information packet" means a collection of information about licensing requirements and application procedures custom-assembled for each request.

(6) "Master application" means a document incorporating pertinent data from existing applications for licenses covered under this chapter.

(7) "Master license" means the single document designed for public display issued by the business license center which certifies state agency or local government license approval and which incorporates the endorsements for individual licenses included in the master license system, which the state or local government requires for any person subject to this chapter.

(8) "Participating local government" means a municipal corporation or political subdivision that participates in the master license system established by this chapter.

(9) "Person" means any individual, sole proprietorship, partnership, association, cooperative, corporation, nonprofit organization, state or local government agency, and any other organization required to register with the state or a participating local government to do business in the state or the participating local government and to obtain one or more licenses from the state or any of its agencies or the participating local government.

(10) "Regulatory" means all licensing and other governmental or statutory requirements pertaining to business or professional activities.

(11) "Regulatory agency" means any state agency, board, commission, division, or local government that regulates one or more professions, occupations, industries, businesses, or activities.

(12) "Renewal application" means a document used to collect pertinent data for renewal of licenses covered under this chapter.

(13) "System" or "master license system" means the procedure by which master licenses are issued and renewed, license and regulatory information is collected and disseminated with due regard to privacy statutes, and account data is exchanged by the agencies and participating local governments. [2011 c 298 § 4; 1993 c 142 § 3; 1992 c 107 § 1; 1982 c 182 § 2; 1979 c 158 § 75; 1977 ex.s. c 319 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—Intent—2011 c 298: "The purpose of this act is to improve customer service by transferring the master license service program from the department of licensing to the department of revenue. It is the legislature's intent that all licenses obtained or renewed through the master license service as of March 1, 2011, will continue to be obtained or renewed through the master license service after the master license service program is transferred to the department of revenue effective July 1, 2011." [2011 c 298 § 1.]

Agency transfer—2011 c 298: "(1) All powers, duties, and functions of the department of licensing pertaining to the administration of chapters 19.02, 19.80, and 59.30 RCW are transferred to the department of revenue. All references to the department of licensing or the director of licensing in the Revised Code of Washington must be construed to mean the department of revenue or the director of revenue when referring to the powers, duties, and functions transferred under this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material, including electronic records and files, in the possession of the department of licensing pertaining to the powers, functions, and duties transferred to the department of revenue under this section must be delivered to the custody of the department of revenue. All cabinets, furniture, office

equipment, motor vehicles, and other tangible property employed by the department of licensing in carrying out the powers, functions, and duties transferred must be made available to the department of revenue. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred must be assigned to the department of revenue.

(b) Any appropriations made to the department of licensing for carrying out the powers, functions, and duties transferred must, on July 1, 2011, be transferred and credited to the department of revenue.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management must make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the department of licensing primarily engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the department of revenue. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of revenue to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of licensing pertaining to the powers, functions, and duties transferred must be continued and acted upon by the department of revenue. All existing contracts and obligations must remain in full force and must be performed by the department of revenue.

(5) The transfer of the powers, duties, functions, and personnel of the department of licensing does not affect the validity of any act performed before July 1, 2011.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management must certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these must make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) All classified employees of the department of licensing assigned to the department of revenue under this section whose positions are within an existing bargaining unit description at the department of revenue must become a part of the existing bargaining unit at the department of revenue and must be considered an appropriate inclusion or modification of the existing bargaining unit, if any, under the provisions of chapter 41.80 RCW." [2011 c 298 § 2.]

Contracting—2011 c 298: "To ensure a seamless transfer of the master license service program from the department of licensing to the department of revenue and to prevent any disruption of service to persons seeking to use the master license system, the department of revenue is authorized to contract, under chapter 39.34 RCW, with the department of licensing for support in administering chapters 19.02, 19.80, and 59.30 RCW. Any contract entered into pursuant to this section must be for a duration no longer than necessary to fully and effectively transfer the master license service program from the department of licensing to the department of revenue." [2011 c 298 § 3.]

Effective date—2011 c 298: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 c 298 § 43.]

Additional notes found at www.leg.wa.gov

19.02.030 Business license center—Duties—Rules.

(1) There is located within the department a business license center.

(2) The duties of the center include:

(a) Developing and administering a computerized one-stop master license system capable of storing, retrieving, and exchanging license information with due regard to privacy statutes, as well as issuing and renewing master licenses in an efficient manner;

(b) Providing a license information service detailing requirements to establish or engage in business in this state;

(c) Providing for staggered master license renewal dates;

(d) Identifying types of licenses appropriate for inclusion in the master license system;

(e) Recommending in reports to the governor and the legislature the elimination, consolidation, or other modification of duplicative, ineffective, or inefficient licensing or inspection requirements; and

(f) Incorporating licenses into the master license system.

(3) The department may adopt under chapter 34.05 RCW such rules as may be necessary to effectuate the purposes of this chapter. [2011 c 298 § 5; 1999 c 240 § 5; 1993 c 142 § 4; 1982 c 182 § 3; 1979 c 158 § 76; 1977 ex.s. c 319 § 3.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

19.02.050 Participation of state agencies. The legislature hereby directs the full participation by the following agencies in the implementation of this chapter:

- (1) Department of agriculture;
- (2) Secretary of state;
- (3) Department of social and health services;
- (4) Department of revenue;
- (5) Department of fish and wildlife;
- (6) Employment security department;
- (7) Department of labor and industries;
- (8) Department of commerce;
- (9) Liquor control board;
- (10) Department of health;
- (11) Department of licensing;
- (12) Parks and recreation commission;
- (13) Utilities and transportation commission; and

(14) Other agencies as determined by the governor. [2011 c 298 § 6; 1997 c 391 § 11; 1994 c 264 § 8; 1989 1st ex.s. c 9 § 317; 1985 c 466 § 38; 1979 c 158 § 78; 1977 ex.s. c 319 § 5.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

19.02.070 Issuance of licenses—Scope—Master application and fees—Action by regulatory agency, when—Agencies provided information. (1) Any person requiring licenses which have been incorporated into the system must submit a master application to the department requesting the issuance of the licenses. The master application form must contain in consolidated form information necessary for the issuance of the licenses.

(2) The applicant must include with the application the sum of all fees and deposits required for the requested individual license endorsements as well as the handling fee established by the department under the authority of RCW 19.02.075.

(3) Irrespective of any authority delegated to the department to implement the provisions of this chapter, the authority for approving issuance and renewal of any requested license that requires a preclicensing or renewal investigation, inspection, testing, or other judgmental review by the regulatory agency otherwise legally authorized to issue the license must remain with that agency. The business license center has the authority to issue those licenses for which proper fee payment and a completed application form have been

received and for which no preclicensing or renewal approval action is required by the regulatory agency.

(4) Upon receipt of the application and proper fee payment for any license for which issuance is subject to regulatory agency action under subsection (3) of this section, the department must immediately notify the regulatory agency with authority to approve issuance or renewal of the license requested by the applicant. Each regulatory agency must advise the department within a reasonable time after receiving the notice: (a) That the agency approves the issuance of the requested license and will advise the applicant of any specific conditions required for issuing the license; (b) that the agency denies the issuance of the license and gives the applicant reasons for the denial; or (c) that the application is pending.

(5) The department must issue a master license endorsed for all the approved licenses to the applicant and advise the applicant of the status of other requested licenses. It is the responsibility of the applicant to contest the decision regarding conditions imposed or licenses denied through the normal process established by statute or by the regulatory agency with the authority for approving issuance of the license.

(6) Regulatory agencies must be provided information from the master application for their licensing and regulatory functions. [2011 c 298 § 7; 1990 c 264 § 1; 1982 c 182 § 6; 1979 c 158 § 79; 1977 ex.s. c 319 § 7.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

19.02.075 Master application handling and renewal fees. The department must collect a handling fee on each master application and each renewal application filing. The department must set the amount of the handling fees by rule, as authorized by RCW 19.02.030. The handling fees may not exceed nineteen dollars for each master application, and eleven dollars for each renewal application filing, and must be deposited in the master license fund. The department may increase handling and renewal fees for the purposes of making improvements in the master license service program, including improvements in technology and customer services, expanded access, and infrastructure. [2011 c 298 § 8; 1995 c 403 § 1007; 1992 c 107 § 2; 1990 c 264 § 2.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

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

Additional notes found at www.leg.wa.gov

19.02.100 Master license—Issuance or renewal—Denial. (1) The department may not issue or renew a master license to any person if:

(a) The person does not have a valid tax registration, if required by a regulatory agency;

(b) The person is a corporation delinquent in fees or penalties owing to the secretary of state or is not validly registered under Title 23B RCW, chapter 18.100 RCW, Title 24 RCW, or any other statute now or hereafter adopted which gives corporate or business licensing responsibilities to the secretary of state if the person is required to be so registered; or

(c) The person has not submitted the sum of all fees and deposits required for the requested individual license endorsements, any outstanding master license delinquency fee, or other fees and penalties to be collected through the system.

(2) Nothing in this section prevents registration by the state of a business for taxation purposes, or an employer for the purpose of paying an employee of that employer industrial insurance or unemployment insurance benefits.

(3) The department must immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate is automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2011 c 298 § 9; 1997 c 58 § 865; 1991 c 72 § 8; 1982 c 182 § 10.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.02.115 Licensing information—Authorized disclosure—Penalty. (1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner licensing information;

(b) "Licensing information" means any information created or obtained by the department in the administration of this chapter and chapters 19.80 and 59.30 RCW, which information relates to any person who: (i) Has applied for or has been issued a license or trade name; or (ii) has been issued an assessment or delinquency fee. Licensing information includes master applications, renewal applications, and master licenses; and

(c) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency.

(2) Licensing information is confidential and privileged, and except as authorized by this section, neither the department nor any other person may disclose any licensing information. Nothing in this chapter requires any person possessing licensing information made confidential and privileged by this section to delete information from such information so as to permit its disclosure.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing licensing information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In which the person about whom such licensing information is sought and the department, another state agency, or a local government are adverse parties in the proceeding; or

(ii) Involving a dispute arising out of the department's administration of chapter 19.02, 19.80, or 59.30 RCW if the licensing information relates to a party in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to chapter 34.05 RCW, such licensing information regarding a

license applicant or license holder to such license applicant or license holder or to such person or persons as that license applicant or license holder may designate in a request for, or consent to, such disclosure, or to any other person, at the license applicant's or license holder's request, to the extent necessary to comply with a request for information or assistance made by the license applicant or license holder to such other person. However, licensing information not received from the license applicant or holder must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the license applicant, license holder, or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies, which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the license applicant or license holder by the order of any court;

(c) Publishing statistics so classified as to prevent the identification of particular licensing information;

(d) Disclosing licensing information for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions, or licensing;

(e) Permitting the department's records to be audited and examined by the proper state officer, his or her agents and employees;

(f) Disclosing any licensing information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax or license enforcement. A peace officer or county prosecuting attorney who receives the licensing information may disclose that licensing information only for use in the investigation and a related court proceeding, or in the court proceeding for which the licensing information originally was sought;

(g) Disclosing, in a manner that is not associated with other licensing information, the name of a license applicant or license holder, entity type, registered trade name, business address, mailing address, unified business identifier number, list of licenses issued to a person through the master license system established in chapter 19.02 RCW and their issuance and expiration dates, and the dates of opening of a business. The department is authorized to give, sell, or provide access to lists of licensing information under this subsection (3)(g) that will be used for commercial purposes;

(h) Disclosing licensing information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(i) Disclosing any licensing information when the disclosure is specifically authorized under any other section of the Revised Code of Washington;

(j) Disclosing licensing information to the proper officer of the licensing or tax department of any city, town, or county of this state, for official purposes. If the licensing information does not relate to a license issued by the city, town, or county requesting the licensing information, disclosure may be made only if the laws of the requesting city, town, or county grants substantially similar privileges to the proper officers of this state; or

(k) Disclosing licensing information to the federal government for official purposes.

(4) The department may refuse to disclose licensing information that is otherwise disclosable under subsection (3) of this section if such disclosure would violate federal law or any information sharing agreement between the state and federal government.

(5) Any person acquiring knowledge of any licensing information in the course of his or her employment with the department and any person acquiring knowledge of any licensing information as provided under subsection (3)(d), (e), (f), (j), or (k) of this section, who discloses any such licensing information to another person not entitled to knowledge of such licensing information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this state for a period of two years thereafter. [2011 c 298 § 12.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

19.02.800 Master license system—Certain business or professional activity licenses exempt. Except as provided in RCW 43.07.200, the provisions of this chapter regarding the processing of license applications and renewals under a master license system do not apply to those business or professional activities that are licensed or regulated under chapter 31.04, 31.12, or 31.13 RCW or under Title 30, 32, 33, or 48 RCW. [2011 c 298 § 10; 2000 c 171 § 44; 1982 c 182 § 17.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

19.02.900 Severability—1977 ex.s. c 319. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [2011 c 298 § 11; 1977 ex.s. c 319 § 10.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

19.02.901 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

19.02.910 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

[2011 RCW Supp—page 336]

Chapter 19.09 RCW

CHARITABLE SOLICITATIONS

Sections

19.09.010	Purpose.
19.09.020	Definitions. (<i>Effective until January 1, 2012.</i>)
19.09.020	Definitions. (<i>Effective January 1, 2012.</i>)
19.09.062	Fees—Charitable organizations—Commercial fund-raisers.
19.09.065	Charitable organizations and commercial fund-raisers—Registration required—Public record—Registration not endorsement.
19.09.068	Application for registration—When registered—Incomplete application—Failure to pay filing fee.
19.09.071	Application for registration—Solicitation report—Violation.
19.09.075	Charitable organizations—Application for registration or renewal—Contents—Fee.
19.09.076	Repealed.
19.09.079	Commercial fund-raisers—Application for registration or renewal—Contents—Fee.
19.09.081	Application requirements—Exemptions.
19.09.085	Registration—Duration—Change—Notice to reregister (<i>as amended by 2011 c 183</i>).
19.09.085	Registration—Duration—Notice to renew—When registered—Incomplete application—Failure to pay filing fee (<i>as amended by 2011 c 199</i>).
19.09.097	Contract with commercial fund-raiser—Limitations—Registration form—Contents—Copy—Fee.
19.09.100	Conditions applicable to solicitations.
19.09.190	Repealed.
19.09.191	Commercial fund-raisers—Surety bond.
19.09.200	Books, records, and contracts.
19.09.210	Records requests.
19.09.230	Use of the name, symbol, statement, or emblem of another entity—Filing.
19.09.240	Repealed.
19.09.271	Failure to register—Late filing fee—Notice to attorney general.
19.09.275	Violations—Penalties.
19.09.276	Waiver of rule-set penalties—Notice by organization seeking relief—Investigation.
19.09.277	Violations—Attorney general—Cease and desist order—Temporary order.
19.09.279	Violations—Secretary of state—Penalty—Hearing—Recovery in superior court.
19.09.305	Service on secretary when registrant not found—Procedure—Fee—Costs.
19.09.315	Forms and procedures—Filing of financial statement—Publications—Fee.
19.09.340	Violations deemed unfair practice under chapter 19.86 RCW—Application of chapter 9.04 RCW—Procedure.
19.09.355	Moneys to be transmitted to general fund.
19.09.400	Attorney general—Investigations—Publication of information.
19.09.430	Administrative procedure act to govern administration.
19.09.500	Repealed.
19.09.540	Repealed.
19.09.541	Tiered financial reporting requirements.

19.09.010 Purpose. The purpose of this chapter is to:

(1) Provide citizens of the state of Washington with information relating to any entity that solicits funds from the public for public charitable purposes in order to prevent (a) deceptive and dishonest practices in the conduct of soliciting funds for or in the name of charity; and (b) improper use of contributions intended for charitable purposes;

(2) Improve the transparency and accountability of organizations that solicit funds from the public for charitable purposes; and

(3) Develop and operate educational programs or partnerships for charitable organizations, board members, and the general public that help build public confidence and trust in organizations that solicit funds from the public for charitable purposes. [2011 c 199 § 1; 2007 c 471 § 1; 1986 c 230 § 1; 1973 1st ex.s. c 13 § 1.]

19.09.020 Definitions. (*Effective until January 1, 2012.*) When used in this chapter, unless the context otherwise requires:

(1) A "bona fide officer or employee" of a charitable organization is one (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of an independent contractor in his or her relation with the organization; and (c) whose compensation is not computed on funds raised or to be raised.

(2) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fundraiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries, and political organizations are not charitable organizations, but all are subject to RCW 19.09.100 (15) through (18).

(3) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

(4) "Commercial coventurer" means any individual or corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, or any other legal entity, that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public;

(b) Is not otherwise regularly or primarily engaged in making solicitations in this state or otherwise raising funds in this state for one or more charitable organizations;

(c) Represents to prospective purchasers that, if they purchase a good or service from the commercial coventurer, a portion of the sales price or a sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

(5) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration directly or indirectly solicits or receives contributions within this state for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of, or represents to persons in this state as independently engaged in the business of, soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant is not a commercial fund-raiser or commercial fund-raising entity.

(6) "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(7) "Contribution" means the payment, donation, or promise, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

(8) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

(9) "Entity" means an individual, organization, group, association, partnership, corporation, agency or unit of state government, or any combination thereof.

(10) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization, for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions, and who does not at any time have custody or control of contributions.

A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

(11) "General public" or "public" means any individual or entity located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(12) "Gross revenue" or "annual gross revenue" means, for any accounting period, the total value of revenue, excluding unrealized capital gains, but including noncash contributions of tangible, personal property received by or on behalf of a charitable organization from all sources, without subtracting any costs or expenses.

(13) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(14) "Other employee" of a charitable organization means any person (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of any independent contractor in his or her relation with the organization; and (c) who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

(15) "Political organization" means those organizations whose activities are subject to chapter 42.17A RCW or the Federal Elections Campaign Act of 1971, as amended.

(16) "Religious organization" means those entities that are not churches or integrated auxiliaries and includes non-denominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

(17) "Secretary" means the secretary of state.

(18) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

(19)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(i) Any appeal is made for any charitable purpose;

(ii) The name of any charitable organization is used as an inducement for consummating the sale; or

(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

(b) The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

(c) "Solicitation" does not include bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.

(20) "Solicitation report" means the financial information the secretary requires pursuant to RCW 19.09.075 or 19.09.079. [2011 c 199 § 2; 2007 c 471 § 2; 2002 c 74 § 1; 1993 c 471 § 1; 1986 c 230 § 2; 1983 c 265 § 1; 1979 c 158 § 80; 1977 ex.s. c 222 § 1; 1974 ex.s. c 106 § 1; 1973 1st ex.s. c 13 § 2.]

Captions not law—2002 c 74: "Section captions used in this act are not part of the law." [2002 c 74 § 21.]

19.09.020 Definitions. (Effective January 1, 2012.)

When used in this chapter, unless the context otherwise requires:

(1) A "bona fide officer or employee" of a charitable organization is one (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of an independent contractor in his or her relation with the organization; and (c) whose compensation is not computed on funds raised or to be raised.

(2) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fundraiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries, and political organizations are not charitable organizations, but all are subject to RCW 19.09.100 (15) through (18).

(3) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational

purpose or any other purpose that is beneficial to the community, including environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

(4) "Commercial coventurer" means any individual or corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, or any other legal entity, that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public;

(b) Is not otherwise regularly or primarily engaged in making solicitations in this state or otherwise raising funds in this state for one or more charitable organizations;

(c) Represents to prospective purchasers that, if they purchase a good or service from the commercial coventurer, a portion of the sales price or a sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

(5) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration directly or indirectly solicits or receives contributions within this state for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of, or represents to persons in this state as independently engaged in the business of, soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant is not a commercial fund-raiser or commercial fund-raising entity.

(6) "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(7) "Contribution" means the payment, donation, or promise, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

(8) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

(9) "Entity" means an individual, organization, group, association, partnership, corporation, agency or unit of state government, or any combination thereof.

(10) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization, for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions, and who does not at any time have custody or control of contributions. A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

(11) "General public" or "public" means any individual or entity located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(12) "Gross revenue" or "annual gross revenue" means, for any accounting period, the total value of revenue, excluding unrealized capital gains, but including noncash contributions of tangible, personal property received by or on behalf of a charitable organization from all sources, without subtracting any costs or expenses.

(13) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(14) "Other employee" of a charitable organization means any person (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of any independent contractor in his or her relation with the organization; and (c) who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

(15) "Political organization" means those organizations whose activities are subject to chapter 42.17A RCW or the federal elections campaign act of 1971, as amended.

(16) "Religious organization" means those entities that are not churches or integrated auxiliaries and includes non-denominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

(17) "Secretary" means the secretary of state.

(18) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

(19)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(i) Any appeal is made for any charitable purpose;

(ii) The name of any charitable organization is used as an inducement for consummating the sale; or

(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

(b) The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

(c) "Solicitation" does not include bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.

(20) "Solicitation report" means the financial information the secretary requires pursuant to RCW 19.09.075 or 19.09.079. [2011 c 199 § 2; 2011 c 60 § 9; 2007 c 471 § 2; 2002 c 74 § 1; 1993 c 471 § 1; 1986 c 230 § 2; 1983 c 265 § 1; 1979 c 158 § 80; 1977 ex.s. c 222 § 1; 1974 ex.s. c 106 § 1; 1973 1st ex.s. c 13 § 2.]

Reviser's note: This section was amended by 2011 c 60 § 9 and by 2011 c 199 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 60: See RCW 42.17A.919.

Captions not law—2002 c 74: "Section captions used in this act are not part of the law." [2002 c 74 § 21.]

19.09.062 Fees—Charitable organizations—Commercial fund-raisers. The secretary of state must collect the following fees in accordance with this chapter:

(1) For an application for registration as a charitable organization, a fee of sixty dollars. Twenty dollars of this fee must be deposited in the state general fund and the remaining forty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(2) For an annual renewal of registration as a charitable organization, a fee of forty dollars. Ten dollars of this fee must be deposited in the state general fund and the remaining thirty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(3) For an application for registration as a commercial fund-raiser, a fee of three hundred dollars. Two hundred fifty dollars of this fee must be deposited in the state general fund and the remaining fifty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(4) For an annual renewal of registration as a commercial fund-raiser, a fee of two hundred twenty-five dollars. One hundred seventy-five dollars of this fee must be deposited in the state general fund and the remaining fifty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(5) For a registration of a commercial fund-raiser service contract, a fee of twenty dollars. Ten dollars of this fee must be deposited in the state general fund and the remaining ten dollars must be deposited in the charitable organization education account under RCW 19.09.530. [2011 c 199 § 4; 2010 1st sp.s. c 29 § 11.]

Intent—2010 1st sp.s. c 29: See note following RCW 23B.01.530.

19.09.065 Charitable organizations and commercial fund-raisers—Registration required—Public record—

Registration not endorsement. (1) All charitable organizations and commercial fund-raisers must register with the secretary prior to conducting any solicitations.

(2) Failure to register as required by this chapter is a violation of this chapter.

(3) Information provided to the secretary pursuant to this chapter is a public record except as provided by law. Social security numbers and financial account numbers are not public information.

(4) Registration must not be considered or be represented as an endorsement by the secretary or the state of Washington. [2011 c 199 § 5; 1993 c 471 § 2; 1986 c 230 § 3; 1983 c 265 § 4.]

19.09.068 Application for registration—When registered—Incomplete application—Failure to pay filing fee.

(1) Entities are deemed registered under RCW 19.09.075 or 19.09.079 twenty days after receipt of the registration or renewal form by the secretary and may thereafter solicit contributions from the general public.

(2) If the secretary determines that the application for initial registration or renewal is incomplete, the secretary will notify the applicant of the information necessary to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant will be deemed unregistered and must cease all solicitations as defined by this chapter.

(3) If an applicant fails to pay a required fee for any filing, the secretary will notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by the secretary, the applicant will be deemed unregistered and must cease all solicitations as defined by this chapter. [2011 c 199 § 6.]

19.09.071 Application for registration—Solicitation report—Violation. Charitable organizations must ensure that the financial information included in the solicitation report fairly represents, in all material respects, the financial condition and results of operations of the organization as of, and for, the period presented to the secretary for filing. If the financial information submitted to the secretary is incorrect in any material way, it is a violation of this chapter and the charitable organization may be subject to penalties as provided under RCW 19.09.279. [2011 c 199 § 7.]

19.09.075 Charitable organizations—Application for registration or renewal—Contents—Fee. (1) An application for initial registration and renewal as a charitable organization must be submitted on the form approved by the secretary and must contain:

(a) The name, address, and telephone number of the charitable organization;

(b) The name(s) under which the charitable organization will solicit contributions;

(c) The name, address, and telephone number of the officers of or persons accepting responsibility for the charitable organization;

(d) The names of the three officers or employees receiving the greatest amount of compensation from the charitable organization;

(e) The purpose of the charitable organization;

(f) Whether the organization is exempt from federal income tax; and if so the organization shall attach to its application a copy of the letter by which the internal revenue service granted such status;

(g) The name and address of the entity that prepares, reviews, or audits the financial statement of the charitable organization;

(h) A solicitation report of the charitable organization for the preceding, completed accounting year including:

(i) The types of solicitations conducted;

(ii) The gross revenue received from all sources by or on behalf of the charitable organization before any expenses are paid or deducted;

(iii) The total value of contributions received from all solicitations for or on behalf of the charitable organization before any expenses are paid or deducted;

(iv) The total value of funds expended for charitable purposes; and

(v) Total expenses, including expenditures for charitable purposes, fund-raising costs, and administrative expenses;

(i) The name, address, and telephone number of any commercial fund-raiser retained by the charitable organization; and

(j) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and

(k) Such other information the secretary deems necessary by rule.

(2) The governing body or committee thereof must review and accept any financial report that the charitable organization may be required to file with the office of the secretary.

(3) Charitable organizations that are required under federal tax law to file an annual return in the form 990 series or any successor series is not required to file a copy of such annual return with the secretary: PROVIDED, That the charitable organization complies with all federal tax law requirements with respect to public inspection of such annual return.

(4) The president, treasurer, or comparable officer of the organization must sign and date the application. The application must be submitted with a nonrefundable filing fee established in RCW 19.09.062.

(5) Charitable organizations required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in subsection (1)(a) through (k) of this section. [2011 c 199 § 8; 2010 1st sp.s. c 29 § 12; 2007 c 471 § 3; 2002 c 74 § 2; 1993 c 471 § 3; 1986 c 230 § 4; 1983 c 265 § 5.]

Intent—2010 1st sp.s. c 29: See note following RCW 23B.01.530.

Captions not law—2002 c 74: See note following RCW 19.09.020.

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

19.09.079 Commercial fund-raisers—Application for registration or renewal—Contents—Fee. An application for registration and renewal as a commercial fund-raiser must be submitted on the form approved by the secretary and must contain:

(1) The name, address, and telephone number of the commercial fund-raising entity;

(2) The name(s), address(es), and telephone number(s) of the owner(s) and principal officer(s) of the commercial fund-raising entity;

(3) The name, address, and telephone number of the individual responsible for the activities of the commercial fund-raising entity in Washington;

(4) The names of the three officers or employees receiving the greatest amount of compensation from the commercial fund-raising entity;

(5) The name and address of the entity that prepares, reviews, or audits the financial statement of the organization;

(6) A solicitation report of the commercial fund-raising entity for the preceding, completed accounting year, including:

(a) The types of fund-raising services conducted;

(b) The names of charitable organizations required to register under RCW 19.09.075 for whom fund-raising services have been performed;

(c) The total value of contributions received on behalf of charitable organizations required to register under RCW 19.09.075 by the commercial fund-raiser, affiliate of the commercial fund-raiser, or any entity retained by the commercial fund-raiser; and

(d) The amount of money disbursed to charitable organizations for charitable purposes, net of fund-raising costs paid by the charitable organization as stipulated in any agreement between charitable organizations and the commercial fund-raiser;

(7) The name, address, and telephone number of any other commercial fund-raiser that was retained in the conduct of providing fund-raising services;

(8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and

(9) Such other information the secretary deems necessary by rule.

The application must be signed by an officer or owner of the commercial fund-raiser and must be submitted with a nonrefundable fee established in RCW 19.09.062.

Commercial fund-raisers required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in subsections (1) through (7) and (9) of this section. [2011 c 199 § 10; 2010 1st sp.s. c 29 § 13; 2007 c 471 § 5; 1993 c 471 § 5; 1986 c 230 § 7; 1983 c 265 § 15.]

Intent—2010 1st sp.s. c 29: See note following RCW 23B.01.530.

19.09.081 Application requirements—Exemptions. The application requirements of RCW 19.09.075 do not apply to:

(1) Any charitable organization raising less than fifty thousand dollars in any accounting year when all the activities of the organization, including all fund-raising activities, are carried on by persons who are unpaid for their services

and no part of the charitable organization's assets or income inures to the benefit of or is paid to any officer, director, member, or trustee of the organization, other than as part of a charitable class benefited by the charitable organization.

(2) Appeals for funds on behalf of a specific individual named in the solicitation, but only if all of the proceeds of the solicitation are given to or expended for the direct benefit of that individual. [2011 c 199 § 3.]

19.09.085 Registration—Duration—Change—Notice to reregister (as amended by 2011 c 183). (1) Registration under this chapter shall be effective for one year or longer, as established by the secretary.

(2) Reregistration required under RCW 19.09.075 or 19.09.079 shall be submitted to the secretary no later than the date established by the secretary by rule.

(3) Entities required to register under this chapter shall file a notice of change of information within thirty days of any change in the information contained in *RCW 19.09.075 (1) through (9) or 19.09.079 (1) through (7).

(4) The secretary shall notify entities registered under this chapter of the need to reregister upon the expiration of their current registration. The notification ((shall)) may be by postal or electronic mail, sent at least sixty days prior to the expiration of their current registration. Failure to register shall not be excused by a failure of the secretary to ((mail)) send the notice or by an entity's failure to receive the notice. [2011 c 183 § 1; 2007 c 471 § 6; 1993 c 471 § 6; 1986 c 230 § 8; 1983 c 265 § 8.]

***Reviser's note:** RCW 19.09.075 was amended by 2011 c 199 s 8, changing the subsection numbering.

19.09.085 Registration—Duration—Notice to renew—When registered—Incomplete application—Failure to pay filing fee (as amended by 2011 c 199). (1) Registration under this chapter ((shall be)) is effective for one year or ((longer,)) as established by the secretary.

(2) ((Reregistration)) Renewals required under RCW 19.09.075 or 19.09.079 ((shall)) must be submitted to the secretary no later than the date established by the secretary by rule.

(3) ((Entities required to register under this chapter shall file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1) through (9) or 19.09.079 (1) through (7)).

(4)) The secretary ((shall)) must notify entities registered under this chapter of the need to ((reregister)) renew upon the expiration of their current registration. The notification ((shall)) must be ((by mail, sent at least)) made approximately sixty days prior to the expiration ((of their current registration)) date and must be made through postal or electronic means. Failure to ((register)) renew shall not be excused by a failure of the secretary to ((mail)) send the notice or by an entity's failure to receive the notice.

(4) Entities required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1)(a) through (k) or 19.09.079 (1) through (7) and (9).

(5) Entities are deemed registered under RCW 19.09.075 or 19.09.079 no sooner than twenty days after receipt of the registration or renewal form by the secretary and may thereafter solicit contributions from the general public.

(6) If the secretary determines that the application for initial registration or renewal is incomplete, the secretary must notify the applicant of the information necessary to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant must be deemed unregistered and must cease all solicitations as defined by this chapter.

(7) If an applicant fails to pay a required fee for any filing, the secretary must notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by the secretary, the applicant must be deemed unregistered and must cease all solicitations as defined by this chapter. [2011 c 199 § 12; 2007 c 471 § 6; 1993 c 471 § 6; 1986 c 230 § 8; 1983 c 265 § 8.]

Reviser's note: RCW 19.09.085 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

19.09.097 Contract with commercial fund-raiser—Limitations—Registration form—Contents—Copy—Fee. (1) No charitable organization may contract with a commercial fund-raiser for any fund-raising service or activity unless its contract requires that both parties comply with the law and permits officers of the charity reasonable access to:

(a) The fund-raisers' financial records relating to that charitable organization;

(b) The fund-raisers' operations including without limitation the right to be present during any telephone solicitation; and

(c) The names of all of the fund-raisers' employees or staff who are conducting fund-raising activities or solicitations on behalf of the charitable organization. In addition, the contract shall specify the amount of raised funds that the charitable organization will receive or the method of computing that amount, the amount of compensation of the commercial fund-raiser or the method of computing that amount, and whether the compensation is fixed or contingent.

(2) Before a charitable organization may contract with a commercial fund-raiser for any fund-raising service or activity, the charitable organization and commercial fund-raiser shall complete and file a registration form with the secretary. The registration must be filed by the charitable organization on the form approved by the secretary and must contain:

(a) The name and registration number of the commercial fund-raiser;

(b) The name and registration number of the charitable organization;

(c) The name of the representative of the commercial fund-raiser who will be responsible for the conduct of the fund-raising;

(d) The type(s) of service(s) to be provided by the commercial fund-raiser;

(e) The term dates of the contract and the dates such service(s) will begin and end;

(f) The terms of the contract between the charitable organization and commercial fund-raiser relating to:

(i) Amount or percentages of amounts to inure to the charitable organization;

(ii) Limitations placed on the maximum amount to be raised by the fund-raiser, if the amount to inure to the charitable organization is not stated as a percentage of the amount raised;

(iii) Costs of fund-raising that will be the responsibility of the charitable organization, regardless of whether paid as a direct expense, deducted from the amounts disbursed, or otherwise; and

(iv) The manner in which contributions received directly by the charitable organization, not the result of services provided by the commercial fund-raiser, will be identified and used in computing the fee owed to the commercial fund-raiser; and

(g) The names of any entity, other than the contracting commercial fund-raiser to which any of the total anticipated fund-raising cost is to be paid, and whether any principal officer or owner of the commercial fund-raiser or relative by blood or marriage thereof is an owner or officer of any such entity.

(3) The registration form must be submitted with a non-refundable filing fee established in RCW 19.09.062 and must

be signed by an owner or principal officer of the commercial fund-raiser and the president, treasurer, trustee or comparable officer of the charitable organization.

(4) A correct copy of the contract shall be filed with the secretary before the commencement of any campaign.

(5) If the secretary determines that the application is incomplete, the secretary must notify the applicant of the information necessary to complete the application. The secretary may hold documents up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant must be deemed unregistered and the commercial fund-raiser must cease all solicitations under the terms of the contract.

(6) If an applicant fails to pay the required filing fee, the secretary must notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by the secretary, the applicant must be deemed unregistered and the commercial fund-raiser must cease all solicitations under the terms of the contract. [2011 c 199 § 13; 2010 1st sp.s. c 29 § 14; 2007 c 471 § 7; 1993 c 471 § 7; 1986 c 230 § 10.]

Intent—2010 1st sp.s. c 29: See note following RCW 23B.01.530.

19.09.100 Conditions applicable to solicitations. All entities soliciting contributions for charitable purposes must comply with the requirements of this section except entities exempted from registration are not required to make the disclosures under subsections (1)(c), (4)(b) or (c), and (5)(b) of this section. The following conditions apply to solicitations as defined by RCW 19.09.020:

(1) Any entity that directly solicits contributions from the public in this state must make the following clear and conspicuous disclosures at the point of solicitation:

(a) The name of the individual making the solicitation;

(b) The identity of the charitable organization and the city of the principal place of business of the charitable organization;

(c) The published number and web site of the office of the secretary, if requested, for the donor to obtain additional financial and other information on file with the secretary. The disclosure must be made during an oral solicitation of a contribution, and at the same time at which a written request for a contribution is made.

(2) A commercial fund-raiser must meet the required disclosures described in subsection (1) of this section clearly and conspicuously at the point of solicitation and must also disclose the name of the entity for which the fund-raiser is an agent or employee and the name and city of the charitable organization for which the solicitation is being conducted.

(3) Telephone solicitations must include the disclosures required under subsection (1) or (2) of this section prior to asking for a contribution. The required disclosures must also be provided in writing within five business days to anyone who makes a pledge by telephone to donate.

(4) In the case of a solicitation by advertisement or mass distribution, including postal, electronic, posters, leaflets, automatic dialing machines, publications, and audio or video

broadcasts, it must be clearly and conspicuously disclosed in the body of the solicitation material that:

(a) The solicitation is conducted by a named commercial fund-raiser, if it is;

(b) The registration required by the charitable solicitation act is on file with the secretary's office; and

(c) The potential donor can obtain additional financial and other information at a published number or web site for the office of the secretary.

(5) A container or vending machine displaying a solicitation must display:

(a) In a clear and conspicuous manner the name of the charitable organization for which funds are solicited, the name, business address, and telephone number of the individual or any commercial fund-raiser responsible for collecting funds placed in the containers or vending machines;

(b) The statement: "This organization is currently registered with the secretary's office under the charitable solicitation act - call 1-800-332-4483," if the charitable organization for which funds are solicited is required to register under chapter 19.09 RCW.

(6) No entity may represent that tickets to any fund-raising event will be donated for use by another person unless all the following requirements are met:

(a) The entity prior to conducting a solicitation has written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they will accept;

(b) The written commitments are kept on file by the entity for three years and are made available to the secretary, attorney general, or county prosecutor on demand;

(c) The contributions solicited for donated tickets may not be more than the amount representing the number of ticket commitments received from persons and kept on file under (a) of this subsection; and

(d) Not later than seven calendar days prior to the date of the event for which ticket donations are solicited, the entity must give all donated tickets to the persons who made the written commitments to accept them.

(7) Any entity soliciting charitable contributions must not misrepresent orally or in writing:

(a) The tax deductibility of a contribution;

(b) That the person soliciting the charitable contribution is a volunteer or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor unless such person is unpaid for his or her services;

(c) That the person soliciting the charitable contribution is a member, staffer, helper, or employee of the charitable organization or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor if the person soliciting is employed, contracted, or paid by a commercial fund-raiser.

(8) If the charitable organization is associated with, or has a name that is similar to, any unit of government the entity soliciting contributions must disclose to each person solicited whether the charitable organization is or is not part of any unit of government and the true nature of its relationship to the unit of government. This subsection does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a

registered public charity, including any governmental agency or unit, from which it derives its name.

(9) No entity may, in conducting any solicitation, use the name "police," "sheriff," "firefighters," or a similar name unless properly authorized by the police, sheriff, or firefighter organization or police, sheriff, or fire department it is representing. Authorization must be in writing and signed by two authorized officials of the organization or department. The written authorization must be retained in accordance with RCW 19.09.200.

(10) An entity may not, in conducting any solicitation, use the name of a federally chartered or nationally recognized military veterans' service organization as determined by the United States veterans' administration unless authorized in writing by the highest ranking official of that organization in this state. The written authorization must be retained in accordance with RCW 19.09.200.

(11) Entities must comply with all local governmental regulations that apply to soliciting for or on behalf of charitable organizations.

(12) Any entity required to register under this chapter must not engage in any solicitation for contributions unless it complies with all provisions of this chapter.

(13) Solicitations must not be conducted by a charitable organization or commercial fund-raiser that has, or if a corporation, its officers, directors, or principals have, been convicted of a crime involving solicitations for or on behalf of a charitable organization in this state, the United States, or any other state or foreign country within the past ten years or has been subject to any permanent injunction or administrative order or judgment under RCW 19.86.080 or 19.86.090, involving a violation or violations of RCW 19.86.020, within the past ten years, or of restraining a false or misleading promotional plan involving solicitations for charitable organizations.

(14) Any entity subject to this chapter must not use or exploit the fact of registration under this chapter to lead the public to believe that registration constitutes an endorsement or approval by the state, but the use of the following is not deemed prohibited: "Currently registered with the Washington state secretary of state as required by law. Registration number"

(15) Any entity soliciting contributions for a charitable purpose must not include in any solicitation, or in any advertising material for a solicitation, or in any promotional plan for a solicitation, any statement that is false, misleading, or deceptive. All solicitations, advertising materials, and promotional plans must fully and fairly disclose the identity of the entity on whose behalf the solicitation is made.

(16) No entity may place a telephone call to a donor or potential donor for the purpose of soliciting contributions for a charitable purpose, before eight o'clock a.m. or after nine o'clock p.m. pacific time.

(17) No entity may, when contacting a donor or potential donor for the purpose of soliciting contributions for a charitable purpose, engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the contact.

(18) Any entity that solicits contributions may not collect or attempt to collect contributions in person or by courier unless:

(a) The contributions are noncash items such as contributions of tangible personal property; or

(b) The solicitations are made in person and the collections, or attempts to collect, are made at the time of the solicitations; or

(c) The contributor has agreed to purchase goods or items in connection with the solicitation and the collection or attempt to collect is made at the time of delivery of the goods or items.

(19) Failure to comply with subsections (1) through (18) of this section is a violation of this chapter. [2011 c 199 § 14. Prior: 2007 c 471 § 8; 2007 c 218 § 64; 1994 c 287 § 2; 1993 c 471 § 9; 1986 c 230 § 11; 1983 c 265 § 9; 1982 c 227 § 7; 1977 ex.s. c 222 § 6; 1974 ex.s. c 106 § 3; 1973 1st ex.s. c 13 § 10.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Additional notes found at www.leg.wa.gov

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

19.09.191 Commercial fund-raisers—Surety bond.

(1) Every commercial fund-raiser must execute a surety bond if it:

(a) Directly or indirectly receives contributions from the public on behalf of any charitable organization;

(b) Is compensated based upon funds raised or to be raised, number of solicitations made or to be made, or any other similar method;

(c) Incurs or is authorized to incur expenses on behalf of the charitable organization; or

(d) Has not been registered with the secretary as a commercial fund-raiser for the preceding accounting year.

(2) The surety bond must be executed as principal in the amount prescribed by the secretary in rule. The issuer of the surety bond must be licensed to do business in this state, and must promptly notify the secretary when claims or payments are made against the bond or when the bond is canceled. The bond must be filed with the secretary in the form prescribed by the secretary. The bond must run to the state and to any person who may have a cause of action against the obligor of said bond for any malfeasance, misfeasance, or deceptive practice in the conduct of solicitations.

The secretary may also provide by rule for the reduction and reinstatement of the bond required by this section. [2011 c 199 § 11.]

19.09.200 Books, records, and contracts. (1) All entities required to register pursuant to this chapter must maintain accurate, current, and readily available books and records at their usual business locations until at least three years have elapsed following the effective period to which they relate. The books and records must contain, at a minimum, documentation supporting the information contained in the solicitation report and written authorization or authorizations required in RCW 19.09.100.

(2) All contracts between commercial fund-raisers and charitable organizations must be in writing, and true and correct copies of such contracts or records thereof must be kept on file in the various offices of the charitable organization

and the commercial fund-raiser for a three-year period. Such records and contracts shall be available for inspection and examination by the secretary of state, attorney general, or by the county prosecuting attorney. A copy of such contract or record must be submitted by the charitable organization or commercial fund-raiser, within ten days, following receipt of a written demand from the secretary of state, attorney general, or county prosecutor. [2011 c 199 § 15; 1993 c 471 § 11; 1986 c 230 § 12; 1982 c 227 § 9; 1973 1st ex.s. c 13 § 20.]

Additional notes found at www.leg.wa.gov

19.09.210 Records requests. Upon the request of the secretary of state, attorney general, or the county prosecutor, any entity subject to this chapter must submit a financial statement and all requested records containing, but not limited to, the following information:

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to commercial fund-raisers or charitable organizations.

(5) Copies of any annual or periodic reports furnished by the charitable organization or commercial fund-raiser of its activities during or for the same accounting period. [2011 c 199 § 16; 2007 c 471 § 9; 1993 c 471 § 12; 1986 c 230 § 13; 1983 c 265 § 10; 1982 c 227 § 10; 1977 ex.s. c 222 § 10; 1975 1st ex.s. c 219 § 1; 1973 1st ex.s. c 13 § 21.]

Additional notes found at www.leg.wa.gov

19.09.230 Use of the name, symbol, statement, or emblem of another entity—Filing. No entity subject to this chapter may:

(1) Use an identical or deceptively similar name, symbol, statement, or emblem so closely related or similar that its use would confuse or mislead the public, of any other entity for the purpose of soliciting contributions from persons in this state without the written consent of such other entity. Written consent may be deemed to have been given by anyone who is a director, trustee, or other authorized officer of that entity.

(2) A copy of the written consent must be retained on file by the charitable organization or commercial fund-raiser and made available to the secretary, attorney general, or county prosecutor upon demand. The secretary may revoke or deny an application for registration that violates this section.

(3) An entity may be deemed to have used the name of another entity for the purpose of soliciting contributions if such latter entity's name is listed on any stationery, advertisement, brochure, or correspondence of the entity or if such name is listed or represented to anyone who has contributed to, sponsored, or endorsed the entity, or its activities.

This section does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name. [2011 c 199 § 17; 1994 c 287 § 3; 1993 c 471 § 13; 1986 c 230 § 14; 1982 c 227 § 11; 1973 1st ex.s. c 13 § 23.]

Additional notes found at www.leg.wa.gov

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

19.09.271 Failure to register—Late filing fee—Notice to attorney general. (1) If the secretary or attorney general determines that any entity is soliciting in this state, directly or indirectly, by any means, and has not registered with the secretary as required by this chapter, the secretary may notify the charitable organization or commercial fund-raiser of its registration requirements by postal or electronic means.

(2) The secretary may notify the attorney general of any entity liable for late filing fees under subsection (1) of this section.

(3) Any entity who, after notification by the secretary, fails to properly register under this chapter is subject to a late filing fee in an amount to be established by rule by the end of the first business day following the issuance of the notice. The late filing fee is in addition to any other filing fee provided by this chapter.

(4) If the secretary or attorney general determines that any entity is soliciting in this state, directly or indirectly, by any means, and the entity has not registered with the secretary as required by this chapter, the secretary, after five days notice sent by postal or electronic means to the charitable organization or commercial fund-raiser, may publish a press release in newspapers or on the internet, a notice to the public regarding the entity's unregistered status. [2011 c 199 § 18; 1993 c 471 § 8; 1986 c 230 § 17.]

19.09.275 Violations—Penalties. (1) Any entity who knowingly violates any provision of this chapter or who knowingly gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) Any entity who violates any provisions of this chapter or who gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [2011 c 199 § 19; 2003 c 53 § 142; 1993 c 471 § 15; 1986 c 230 § 18; 1983 c 265 § 11; 1982 c 227 § 12; 1977 ex.s. c 222 § 14.]

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

Additional notes found at www.leg.wa.gov

19.09.276 Waiver of rule-set penalties—Notice by organization seeking relief—Investigation. The secretary may waive penalties that have been set by rule and assessed by the secretary due from a registered entity previously in good standing that would otherwise be penalized. An entity desiring to seek relief under this section must, within fifteen days of discovery of the missed filing or lapse by its officers, directors, or other persons responsible for the missed filing or lapse, notify the secretary in writing. The notification must include the name and mailing address of the organization, the organization's officer to whom correspondence should be

sent, and a statement under oath by a responsible officer of the organization, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary shall investigate the circumstances of the missed filing or lapse. If the secretary is satisfied that sufficient exigent or mitigating circumstances exist, that the entity has demonstrated good faith and a reasonable attempt to comply with the applicable charitable solicitation statute of this state, the secretary may issue an order allowing relief from the penalty. If the secretary determines the request does not comply with the requirements for relief, the secretary shall deny the relief and state the reasons for the denial. Notwithstanding chapter 34.05 RCW, a denial of relief by the secretary is not reviewable. [2011 c 199 § 20; 1994 c 287 § 4.]

19.09.277 Violations—Attorney general—Cease and desist order—Temporary order. If it appears to the attorney general that an entity has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule adopted or order issued under this chapter, the attorney general may, in the attorney general's discretion, issue an order directing the entity to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The attorney general may issue a temporary order pending the hearing, which shall remain in effect until ten days after the hearing is held and which shall become final if the entity to whom the notice is addressed does not request a hearing within fifteen days after the receipt of the notice. [2011 c 199 § 21; 1993 c 471 § 20.]

19.09.279 Violations—Secretary of state—Penalty—Hearing—Recovery in superior court. (1) The secretary may assess against any entity that violates this chapter, or any rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.

(2) The entity must be afforded the opportunity for a hearing, upon request made to the secretary within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(3) If any entity fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the state, the attorney general may recover the amount assessed by action in the appropriate superior court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review. [2011 c 199 § 22; 2002 c 74 § 3; 1993 c 471 § 21.]

Captions not law—2002 c 74: See note following RCW 19.09.020.

19.09.305 Service on secretary when registrant not found—Procedure—Fee—Costs. When an entity registered under this chapter, or its president, treasurer, or comparable officers, cannot be found after reasonably diligent effort, the secretary of state must be an agent of such entity upon whom process may be served. Service on the secretary must be made by delivering to the secretary or the secretary's designee duplicate copies of such process, and a filing fee to

be established by rule of the secretary. Thereupon, the secretary must immediately cause one of the copies to be forwarded to the registrant at the most current address shown in the secretary's files. Any service on the secretary must be returnable in not less than thirty days.

Any fee under this section may be taxable as costs in the action.

The secretary must maintain a record of all process served on the secretary under this section, and must record the date of service and the secretary's action.

Nothing in this section limits or affects the right to serve process required or permitted to be served on a registrant in any other manner now or hereafter permitted by law. [2011 c 199 § 23; 1993 c 471 § 16; 1983 c 265 § 7.]

19.09.315 Forms and procedures—Filing of financial statement—Publications—Fee. (1) The secretary may establish, by rule, standard forms and procedures for the efficient administration of this chapter.

(2) The secretary may provide by rule for the filing of a financial statement by registered entities.

(3) The secretary may issue such publications, reports, or information from the records as may be useful to the solicited public and charitable organizations. To defray the costs of any such publication, the secretary is authorized to charge a reasonable fee to cover the costs of preparing, printing, and distributing such publications, in accordance with RCW 43.07.130. [2011 c 199 § 24; 1993 c 471 § 17; 1983 c 265 § 17.]

19.09.340 Violations deemed unfair practice under chapter 19.86 RCW—Application of chapter 9.04 RCW—Procedure. (1) The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) The secretary may refer such evidence, as may be available, concerning violations of this chapter to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose. In addition to any other action they might commence, the attorney general or the county prosecuting attorney may bring an action in the name of the state, with or without such reference, against any entity to restrain and prevent the doing of any act or practice prohibited by this chapter: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all entities subject to this chapter. [2011 c 199 § 25; 1983 c 265 § 12; 1982 c 227 § 13; 1973 1st ex.s. c 13 § 34.]

Additional notes found at www.leg.wa.gov

19.09.355 Moneys to be transmitted to general fund. Except as otherwise provided in this chapter, all fees and

[2011 RCW Supp—page 346]

other moneys received by the secretary of state under this chapter must be transmitted to the state treasurer for deposit in the state general fund. [2011 c 199 § 26; 2010 1st sp.s. c 29 § 15; 1983 c 265 § 18.]

Intent—2010 1st sp.s. c 29: See note following RCW 23B.01.530.

19.09.400 Attorney general—Investigations—Publication of information. The attorney general, in the attorney general's discretion, may:

(1) Annually, or more frequently, make such public or private investigations within or without this state as the attorney general deems necessary to determine whether any registration should be granted, denied, revoked, or suspended, or whether any entity has violated or is about to violate a provision of this chapter or any rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter; and

(2) Publish information concerning a violation of this chapter or a rule adopted or order issued under this chapter. [2011 c 199 § 27; 1993 c 471 § 18.]

19.09.430 Administrative procedure act to govern administration. The administrative procedure act, chapter 34.05 RCW, wherever applicable governs the rights, remedies, and procedures respecting the administration of this chapter. [2011 c 199 § 28; 1993 c 471 § 22.]

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

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

19.09.541 Tiered financial reporting requirements. The secretary is authorized to adopt rules, in accordance with chapter 34.05 RCW, that establish a set of tiered financial reporting requirements for charitable organizations required to register with the secretary pursuant to this chapter. Rules adopted under this section must include, but not be limited to, substantially the following:

(1) Tier one. Charitable organizations with one million dollars or less in annual gross revenue averaged over the three preceding, completed accounting years must meet the financial reporting requirements specified in RCW 19.09.075.

(2) Tier two. Charitable organizations with more than one million dollars and up to three million dollars in annual gross revenue averaged over the three preceding, completed accounting years must, in addition to the reporting requirements in RCW 19.09.075, make one of the following financial reporting requirements available to the public upon request, or accessible to the public on the internet:

(a) The federal financial reporting form (990, 990PF, 990EZ, 990T) the organization normally files with the IRS which must be prepared by a certified public accountant or other professional who normally prepares such forms in the ordinary course of their business; or

(b) An audited financial statement prepared by an independent certified public accountant for the preceding accounting year.

(3) Tier three. Charitable organizations with more than three million dollars in annual gross revenue averaged over the three preceding, completed accounting years must, in addition to the reporting requirements in RCW 19.09.075, obtain an independent, third-party audit of its financial records for the preceding accounting year. This audit report must be made available in paper form to the public upon request or accessible to the public on the internet.

(4) The secretary may waive a tiered reporting requirement as prescribed in rule. [2011 c 199 § 9.]

Chapter 19.16 RCW COLLECTION AGENCIES

Sections

19.16.140	License—Application—Fees—Exemptions.
19.16.150	Branch office certificate required.
19.16.160	License and branch office certificate—Form—Contents—Display.
19.16.170	Procedure upon change of name or business location.
19.16.180	Assignability of license or branch office certificate.
19.16.190	Surety bond requirements—Cash deposit or securities—Exception.
19.16.200	Action on bond, cash deposit or securities.
19.16.210	Accounting and payments by licensee to customer.
19.16.220	Accounting and payments by customer to licensee.
19.16.230	Licensee—Business office—Records to be kept.
19.16.245	Financial statement.
19.16.250	Prohibited practices.
19.16.260	Licensing prerequisite to suit.
19.16.270	Presumption of validity of assignment.
19.16.280	Board created—Composition of board—Qualification of members.
19.16.290	Board—Initial members—Terms—Oath—Removal.
19.16.300	Board meetings—Quorum—Effect of vacancy.
19.16.340	Board—Records.
19.16.430	Violations—Operating agency without a license—Penalty—Return of fees or compensation.
19.16.470	Violations—Assurance of discontinuance—Effect.
19.16.500	Public bodies may retain collection agencies to collect public debts—Fees.

19.16.140 License—Application—Fees—Exemptions. Each applicant when submitting his or her application shall pay a licensing fee and an investigation fee determined by the director as provided in RCW 43.24.086. The licensing fee for an out-of-state collection agency shall not exceed fifty percent of the licensing fee for a collection agency. An out-of-state collection agency is exempt from the licensing fee if the agency is licensed or registered in a state that does not require payment of an initial fee by any person who collects debts in the state only by means of interstate communications from the person's location in another state. If a license is not issued in response to the application, the license fee shall be returned to the applicant.

An annual license fee determined by the director as provided in RCW 43.24.086 shall be paid to the director on or before January first of each year. The annual license fee for an out-of-state collection agency shall not exceed fifty percent of the annual license fee for a collection agency. An out-of-state collection agency is exempt from the annual license fee if the agency is licensed or registered in a state that does not require payment of an annual fee by any person who collects debts in the state only by means of interstate communications from the person's location in another state. If the annual license fee is not paid on or before January first, the licensee shall be assessed a penalty for late payment in an

amount determined by the director as provided in RCW 43.24.086. If the fee and penalty are not paid by January thirty-first, it will be necessary for the licensee to submit a new application for a license: PROVIDED, That no license shall be issued upon such new application unless and until all fees and penalties previously accrued under this section have been paid.

Any license or branch office certificate issued under the provisions of this chapter shall expire on December thirty-first following the issuance thereof. [2011 c 336 § 509; 1994 c 195 § 4; 1985 c 7 § 81; 1975 1st ex.s. c 30 § 90; 1971 ex.s. c 253 § 5.]

19.16.150 Branch office certificate required. If a licensee maintains a branch office, he, she, or it shall not operate a collection agency business in such branch office until he, she, or it has secured a branch office certificate therefor from the director. A licensee, so long as his, her, or its license is in full force and effect and in good standing, shall be entitled to branch office certificates for any branch office operated by such licensee upon payment of the fee therefor provided in this chapter.

Each licensee when applying for a branch office certificate shall pay a fee determined by the director as provided in RCW 43.24.086. An annual fee determined by the director as provided in RCW 43.24.086 for a branch office certificate shall be paid to the director on or before January first of each year. If the annual fee is not paid on or before January first, a penalty for late payment in an amount determined by the director as provided in RCW 43.24.086 shall be assessed. If the fee and the penalty are not paid by January thirty-first, it will be necessary for the licensee to apply for a new branch office certificate: PROVIDED, That no such new branch office certificate shall be issued unless and until all fees and penalties previously accrued under this section have been paid. [2011 c 336 § 510; 1985 c 7 § 82; 1975 1st ex.s. c 30 § 91; 1971 ex.s. c 253 § 6.]

19.16.160 License and branch office certificate—Form—Contents—Display. Each license and branch office certificate, when issued, shall be in the form and size prescribed by the director and shall state in addition to any other matter required by the director:

- (1) The name of the licensee;
- (2) The name under which the licensee will do business;
- (3) The address at which the collection agency business is to be conducted; and
- (4) The number and expiration date of the license or branch office certificate.

A licensee shall display his, her, or its license in a conspicuous place in his, her, or its principal place of business and, if he, she, or it conducts a branch office, the branch office certificate shall be conspicuously displayed in the branch office.

Concurrently with or prior to engaging in any activity as a collection agency, as defined in this chapter, any person shall furnish to his, her, or its client or customer the number indicated on the collection agency license issued to him, her, or it pursuant to this section. [2011 c 336 § 511; 1973 1st ex.s. c 20 § 2; 1971 ex.s. c 253 § 7.]

19.16.170 Procedure upon change of name or business location. Whenever a licensee shall contemplate a change of his, her, or its trade name or a change in the location of his, her, or its principal place of business or branch office, he, she, or it shall give written notice of such proposed change to the director. The director shall approve the proposed change and issue a new license or a branch office certificate, as the case may be, reflecting the change. [2011 c 336 § 512; 1971 ex.s. c 253 § 8.]

19.16.180 Assignability of license or branch office certificate. (1) Except as provided in subsection (2) of this section, a license or branch office certificate granted under this chapter is not assignable or transferable.

(2) Upon the death of an individual licensee, the director shall have the right to transfer the license and any branch office certificate of the decedent to the personal representative of his or her estate for the period of the unexpired term of the license and such additional time, not to exceed one year from the date of death of the licensee, as said personal representative may need in order to settle the deceased's estate or sell the collection agency. [2011 c 336 § 513; 1971 ex.s. c 253 § 9.]

19.16.190 Surety bond requirements—Cash deposit or securities—Exception. (1) Except as limited by subsection (7) of this section, each applicant shall, at the time of applying for a license, file with the director a surety bond in the sum of five thousand dollars. The bond shall be annually renewable on January first of each year, shall be approved by the director as to form and content, and shall be executed by the applicant as principal and by a surety company authorized to do business in this state as surety. Such bond shall run to the state of Washington as obligee for the benefit of the state and conditioned that the licensee shall faithfully and truly perform all agreements entered into with the licensee's clients or customers and shall, within thirty days after the close of each calendar month, account to and pay to his, her, or its client or customer the net proceeds of all collections made during the preceding calendar month and due to each client or customer less any offsets due licensee under RCW 19.16.210 and 19.16.220. The bond required by this section shall remain in effect until canceled by action of the surety or the licensee or the director.

(2) An applicant for a license under this chapter may furnish, file, and deposit with the director, in lieu of the surety bond provided for herein, a cash deposit or other negotiable security acceptable to the director. The security deposited with the director in lieu of the surety bond shall be returned to the licensee at the expiration of one year after the collection agency's license has expired or been revoked if no legal action has been instituted against the licensee or on said security deposit at the expiration of said one year.

(3) A surety may file with the director notice of his, her, or its withdrawal on the bond of the licensee. Upon filing a new bond or upon the revocation of the collection agency license or upon the expiration of sixty days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate.

(4) The director shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked.

(5) Upon the filing with the director of notice by a surety of his, her, or its withdrawal as the surety on the bond of a licensee or upon the cancellation by the director of the bond of a surety as provided in this section, the director shall immediately give notice to the licensee of the withdrawal or cancellation. The notice shall be sent to the licensee by registered or certified mail with request for a return receipt and addressed to the licensee at his, her, or its main office as shown by the records of the director. At the expiration of thirty days from the date of mailing the notice, the license of the licensee shall be terminated, unless the licensee has filed a new bond with a surety satisfactory to the director.

(6) All bonds given under this chapter shall be filed and held in the office of the director.

(7) An out-of-state collection agency need not fulfill the bonding requirements under this section if the out-of-state collection agency maintains an adequate bond or legal alternative as required by the state in which the out-of-state collection agency is located. [2011 c 336 § 514; 1994 c 195 § 5; 1971 ex.s. c 253 § 10.]

19.16.200 Action on bond, cash deposit or securities. In addition to all other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond or cash deposit or security in lieu thereof, required by RCW 19.16.190, by any person to whom the licensee fails to account and pay as set forth in such bond or by any client or customer of the licensee who has been damaged by failure of the licensee to comply with all agreements entered into with such client or customer: PROVIDED, That the aggregate liability of the surety to all such clients or customers shall in no event exceed the sum of such bond.

An action upon such bond or security shall be commenced by serving and filing of the complaint within one year from the date of the cancellation of the bond or, in the case of a cash deposit or other security deposited in lieu of the surety bond, within one year of the date of expiration or revocation of license: PROVIDED, That no action shall be maintained upon such bond or such cash deposit or other security for any claim which has been barred by any nonclaim statute or statute of limitations of this state. Two copies of the complaint shall be served by registered or certified mail upon the director at the time the suit is started. Such service shall constitute service on the surety. The director shall transmit one of said copies of the complaint served on him or her to the surety within forty-eight hours after it shall have been received.

The director shall maintain a record, available for public inspection, of all suits commenced under this chapter upon surety bonds, or the cash or other security deposited in lieu thereof.

In the event of a judgment being entered against the deposit or security referred to in RCW 19.16.190(2), the director shall, upon receipt of a certified copy of a final judgment, pay said judgment from the amount of the deposit or security. [2011 c 336 § 515; 1971 ex.s. c 253 § 11.]

19.16.210 Accounting and payments by licensee to customer. A licensee shall within thirty days after the close of each calendar month account in writing to his, her, or its customers for all collections made during that calendar month and pay to his, her, or its customers the net proceeds due and payable of all collections made during that calendar month except that a licensee need not account to the customer for:

(1) Court costs recovered which were previously advanced by licensee or his, her, or its attorney.

(2) Attorneys' fees and interest or other charges incidental to the principal amount of the obligation legally and properly belonging to the licensee, if such charges are retained by the licensee after the principal amount of the obligation has been accounted for and remitted to the customer. When the net proceeds are less than ten dollars at the end of any calendar month, payments may be deferred for a period not to exceed three months. [2011 c 336 § 516; 1971 ex.s. c 253 § 12.]

19.16.220 Accounting and payments by customer to licensee. Every customer of a licensee shall, within thirty days after the close of each calendar month, account and pay to his, her, or its collection agency all sums owing to the collection agency for payments received by the customer during that calendar month on claims in the hands of the collection agency.

If a customer fails to pay a licensee any sums due under this section, the licensee shall, in addition to other remedies provided by law, have the right to offset any moneys due the licensee under this section against any moneys due customer under RCW 19.16.210. [2011 c 336 § 517; 1971 ex.s. c 253 § 13.]

19.16.230 Licensee—Business office—Records to be kept. (1) Every licensee required to keep and maintain records pursuant to this section, other than an out-of-state collection agency, shall establish and maintain a regular active business office in the state of Washington for the purpose of conducting his, her, or its collection agency business. Said office must be open to the public during reasonable stated business hours, and must be managed by a resident of the state of Washington.

(2) Every licensee shall keep a record of all sums collected by him, her, or it and all disbursements made by him, her, or it. All such records shall be kept at the business office referred to in subsection (1) of this section, unless the licensee is an out-of-state collection agency, in which case the record shall be kept at the business office listed on the licensee's license.

(3) Licensees shall maintain and preserve accounting records of collections and payments to customers for a period of four years from the date of the last entry thereon. [2011 c 336 § 518; 1994 c 195 § 6; 1987 c 85 § 1; 1973 1st ex.s. c 20 § 3; 1971 ex.s. c 253 § 14.]

19.16.245 Financial statement. No licensee shall receive any money from any debtor as a result of the collection of any claim until he, she, or it shall have submitted a financial statement showing the assets and liabilities of the licensee truly reflecting that the licensee's net worth is not

less than the sum of seven thousand five hundred dollars, in cash or its equivalent, of which not less than five thousand dollars shall be deposited in a bank, available for the use of the licensee's business. Any money so collected shall be subject to the provisions of RCW 19.16.430(2). The financial statement shall be sworn to by the licensee, if the licensee is an individual, or by a partner, officer, or manager in its behalf if the licensee is a partnership, corporation, or unincorporated association. The information contained in the financial statement shall be confidential and not a public record, but is admissible in evidence at any hearing held, or in any action instituted in a court of competent jurisdiction, pursuant to the provisions of this chapter: PROVIDED, That this section shall not apply to those persons holding a valid license issued pursuant to this chapter on July 16, 1973. [2011 c 336 § 519; 1973 1st ex.s. c 20 § 9.]

19.16.250 Prohibited practices. No licensee or employee of a licensee shall:

(1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: PROVIDED, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so. For purposes of this chapter, a "bad debt list" means any list of natural persons alleged to fail to honor their lawful debts. However, nothing herein shall be construed to prohibit a licensee from communicating to its customers or clients by means of a coded list, the existence of a check dishonored because of insufficient funds, not sufficient funds or closed account by the financial institution servicing the debtor's checking account: PROVIDED, That the debtor's identity is not readily apparent: PROVIDED FURTHER, That the licensee complies with the requirements of subsection (10)(e) of this section.

(4) Have in his or her possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.

(5) Perform any act or acts, either directly or indirectly, constituting the practice of law.

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or her or its current license issued hereunder.

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form, other than through proper legal action, process, or proceedings, which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he or she is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall provide this name to the debtor or cease efforts to collect on the debt until this information is provided;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or her or its first notice to the debtor, an itemization of the claim asserted must be made including:

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;

(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or her or its behalf or on the behalf of a customer or assignor; and

(vi) Any other charge or fee that the licensee is attempting to collect on his or her or its own behalf or on the behalf of a customer or assignor;

(d) If the notice, letter, message, or form concerns a judgment obtained against the debtor, no itemization of the amounts contained in the judgment is required, except post-judgment interest, if claimed, and the current account balance;

(e) If the notice, letter, message, or form is the first notice to the debtor, an itemization of the claim asserted must be made including the following information:

(i) The original account number or redacted original account number assigned to the debt, if known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee must make a reasonable effort to obtain this information or cease efforts to collect on the debt until this information is provided; and

(ii) The date of the last payment to the creditor on the subject debt by the debtor, if known to the licensee or employee: PROVIDED, That upon written request of the debtor, the licensee must make a reasonable effort to obtain this information or cease efforts to collect on the debt until this information is provided.

(9) Communicate in writing with a debtor concerning a claim through a proper legal action, process, or proceeding,

where such communication is the first written communication with the debtor, without providing the information set forth in subsection (8)(c) of this section in the written communication.

(10) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim. If the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall, upon receipt of written notice from the debtor that any part of the claim is disputed, notify the credit reporting bureau of the dispute by written or electronic means and create a record of the fact of the notification and when the notification was provided;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his or her last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: PROVIDED, That the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his or her last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(e) A licensee may communicate the existence of a claim to its customers or clients if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee has notified or attempted to notify the debtor in writing at his or her last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(11) Threaten the debtor with impairment of his or her credit rating if a claim is not paid: PROVIDED, That advising a debtor that the licensee has reported or intends to report a claim to a credit reporting agency is not considered a threat if the licensee actually has reported or intends to report the claim to a credit reporting agency.

(12) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney: PROVIDED, That if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or she or it again receives notification in writing that an attorney is representing the debtor.

(13) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if:

(a) It is made with a debtor or spouse in any form, manner, or place, more than three times in a single week, unless the licensee is responding to a communication from the debtor or spouse;

(b) It is made with a debtor at his or her place of employment more than one time in a single week, unless the licensee is responding to a communication from the debtor;

(c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m. A call to a telephone is presumed to be received in the local time zone to which the area code of the number called is assigned for landline numbers, unless the licensee reasonably believes the telephone is located in a different time zone. If the area code is not assigned to landlines in any specific geographic area, such as with toll-free telephone numbers, a call to a telephone is presumed to be received in the local time zone of the debtor's last known place of residence, unless the licensee reasonably believes the telephone is located in a different time zone.

(14) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.

(15) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

(16) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.

(17) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made: PROVIDED, That:

(a) This subsection does not prohibit a licensee from attempting to communicate by way of a cellular telephone or other wireless device: PROVIDED, That a licensee cannot cause charges to be incurred to the recipient of the attempted communication more than three times in any calendar week when the licensee knows or reasonably should know that the number belongs to a cellular telephone or other wireless device, unless the licensee is responding to a communication from the debtor or the person to whom the call is made.

(b) The licensee is not in violation of (a) of this subsection if the licensee at least monthly updates its records with information provided by a commercial provider of cellular telephone lists that the licensee in good faith believes provides reasonably current and comprehensive data identifying cellular telephone numbers, calls a number not appearing in the most recent list provided by the commercial provider, and does not otherwise know or reasonably should know that the number belongs to a cellular telephone.

(c) This subsection may not be construed to increase the number of communications permitted pursuant to subsection (13)(a) of this section.

(18) Call, or send a text message or other electronic communication to, a cellular telephone or other wireless device more than twice in any day when the licensee knows or reasonably should know that the number belongs to a cellular telephone or other wireless device, unless the licensee is responding to a communication from the debtor or the person to whom the call, text message, or other electronic communication is made. The licensee is not in violation of this subsection if the licensee at least monthly updates its records with information provided by a commercial provider of cellular telephone lists that the licensee in good faith believes provides reasonably current and comprehensive data identifying cellular telephone numbers, calls a number not appearing in the most recent list provided by the commercial provider, and does not otherwise know or reasonably should know that the number belongs to a cellular telephone. Nothing in this subsection may be construed to increase the number of communications permitted pursuant to subsection (13)(a) of this section.

(19) Intentionally block its telephone number from displaying on a debtor's telephone.

(20) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.

(21) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs. A licensee may collect or attempt to collect collection costs and fees, including contingent collection fees, as authorized by a written agreement or contract, between the licensee's client and the debtor, in the collection of a commercial claim. The amount charged to the debtor for collection services shall not exceed thirty-five percent of the commercial claim.

(22) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, except

as noted in subsection (21) of this section, and, in the case of suit, attorney's fees and taxable court costs.

(23) Bring an action or initiate an arbitration proceeding on a claim when the licensee knows, or reasonably should know, that such suit or arbitration is barred by the applicable statute of limitations.

(24) Upon notification by a debtor that the debtor disputes all debts arising from a series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, initiate oral contact with a debtor more than one time in an attempt to collect from the debtor debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (a) Within the previous one hundred eighty days, in response to the licensee's attempt to collect the initial debt assigned to the licensee and arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, the debtor in writing notified the licensee that the debtor's checkbook or other series of preprinted written instruments was stolen or fraudulently created; (b) the licensee has received from the debtor a certified copy of a police report referencing the theft or fraudulent creation of the checkbook, automated clearinghouse transactions on a demand deposit account, or series of preprinted written instruments; (c) in the written notification to the licensee or in the police report, the debtor identified the financial institution where the account was maintained, the account number, the magnetic ink character recognition number, the full bank routing and transit number, and the check numbers of the stolen checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, which check numbers included the number of the check that is the subject of the licensee's collection efforts; (d) the debtor provides, or within the previous one hundred eighty days provided, to the licensee a legible copy of a government-issued photo identification, which contains the debtor's signature and which was issued prior to the date of the theft or fraud identified in the police report; and (e) the debtor advised the licensee that the subject debt is disputed because the identified check, automated clearinghouse transaction on a demand deposit account, or other preprinted written instrument underlying the debt is a stolen or fraudulently created check or instrument.

The licensee is not in violation of this subsection if the licensee initiates oral contact with the debtor more than one time in an attempt to collect debts arising from the identified series of dishonored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments when: (i) The licensee acted in good faith and relied on their established practices and procedures for batching, recording, or packeting debtor accounts, and the licensee inadvertently initiates oral contact with the debtor in an attempt to collect debts in the identified series subsequent to the initial debt assigned to the licensee; (ii) the licensee is following up on collection of a debt assigned to the licensee, and the debtor has previously requested more information from the licensee regarding the subject debt; (iii) the debtor has notified the licensee that the debtor disputes only some, but not all the debts arising from the identified series of dis-

honored checks, automated clearinghouse transactions on a demand deposit account, or other preprinted written instruments, in which case the licensee shall be allowed to initiate oral contact with the debtor one time for each debt arising from the series of identified checks, automated clearinghouse transactions on a demand deposit account, or written instruments and initiate additional oral contact for those debts that the debtor acknowledges do not arise from stolen or fraudulently created checks or written instruments; (iv) the oral contact is in the context of a judicial, administrative, arbitration, mediation, or similar proceeding; or (v) the oral contact is made for the purpose of investigating, confirming, or authenticating the information received from the debtor, to provide additional information to the debtor, or to request additional information from the debtor needed by the licensee to accurately record the debtor's information in the licensee's records.

(25) Submit an affidavit or other request pursuant to chapter 6.32 RCW asking a superior or district court to transfer a bond posted by a debtor subject to a money judgment to the licensee, when the debtor has appeared as required. [2011 1st sp.s. c 29 § 2. Prior: 2011 c 162 § 1; 2011 c 57 § 1; prior: 2001 c 217 § 5; 2001 c 47 § 2; (2001 c 217 § 4 expired April 1, 2004); 1983 c 107 § 1; 1981 c 254 § 5; 1971 ex.s. c 253 § 16.]

Finding—Intent—2011 1st sp.s. c 29: "The legislature finds that a drafting error occurred in Substitute Senate Bill No. 5574 (2011 regular session) and section 1, chapter 57, Laws of 2011, resulting in the unintended deletion of a phrase in RCW 19.16.250. The intent of this legislation is to remedy that error, and retroactively apply this legislation to the effective date of section 1, chapter 57, Laws of 2011." [2011 1st sp.s. c 29 § 1.]

Effective date—2011 1st sp.s. c 29: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 22, 2011." [2011 1st sp.s. c 29 § 3.]

Effective date—2001 c 217 § 5: "Section 5 of this act takes effect April 1, 2004." [2001 c 217 § 16.]

Expiration date—2001 c 217 § 4: "Section 4 of this act expires April 1, 2004." [2001 c 217 § 15.]

Captions not law—2001 c 217: See note following RCW 9.35.005.

19.16.260 Licensing prerequisite to suit. No collection agency or out-of-state collection agency may bring or maintain an action in any court of this state involving the collection of a claim of any third party without alleging and proving that he, she, or it is duly licensed under this chapter and has satisfied the bonding requirements hereof, if applicable: PROVIDED, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency or out-of-state collection agency to prove such matters.

A copy of the current collection agency license or out-of-state collection agency license, certified by the director to be a true and correct copy of the original, shall be prima facie evidence of the licensing and bonding of such collection agency or out-of-state collection agency as required by this chapter. [2011 c 336 § 521; 1994 c 195 § 8; 1971 ex.s. c 253 § 17.]

19.16.270 Presumption of validity of assignment. In any action brought by licensee to collect the claim of his, her, or its customer, the assignment of the claim to licensee by his,

her, or its customer shall be conclusively presumed valid, if the assignment is filed in court with the complaint, unless objection is made thereto by the debtor in a written answer or in writing five days or more prior to trial. [2011 c 336 § 522; 1971 ex.s. c 253 § 18.]

19.16.280 Board created—Composition of board—Qualification of members. There is hereby created a board to be known and designated as the "Washington state collection agency board." The board shall consist of five members, one of whom shall be the director and the other four shall be appointed by the governor. The director may delegate his or her duties as a board member to a designee from his or her department. The director or his or her designee shall be the executive officer of the board and its chair.

At least two but no more than two members of the board shall be licensees hereunder. Each of the licensee members of the board shall be actively engaged in the collection agency business at the time of his or her appointment and must continue to be so engaged and continue to be licensed under this chapter during the term of his or her appointment or he or she will be deemed to have resigned his or her position: PROVIDED, That no individual may be a licensee member of the board unless he or she has been actively engaged as either an owner or executive employee or a combination of both of a collection agency business in this state for a period of not less than five years immediately prior to his or her appointment.

No board member shall be employed by or have any interest in, directly or indirectly, as owner, partner, officer, director, agent, stockholder, or attorney, any collection agency in which any other board member is employed by or has such an interest.

No member of the board other than the director or his or her designee shall hold any other elective or appointive state or federal office. [2011 c 336 § 523; 1971 ex.s. c 253 § 19.]

19.16.290 Board—Initial members—Terms—Oath—Removal. The initial members of the board shall be named by the governor within thirty days after January 1, 1972. At the first meeting of the board, the members appointed by the governor shall determine by lot the period of time from January 1, 1972, that each of them shall serve, one for one year; one for two years; one for three years; and one for four years. In the event of a vacancy on the board, the governor shall appoint a successor for the unexpired term.

Each member appointed by the governor shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his or her appointment and until his or her successor is appointed and qualified.

Any member of the board other than the director or his or her designee may be removed by the governor for neglect of duty, misconduct, malfeasance, or misfeasance in office, after being given a written statement of the charges against him or her and sufficient opportunity to be heard thereon. [2011 c 336 § 524; 1971 ex.s. c 253 § 20.]

19.16.300 Board meetings—Quorum—Effect of vacancy. The board shall meet as soon as practicable after

the governor has appointed the initial members of the board. The board shall meet at least once a year and at such other times as may be necessary for the transaction of its business.

The time and place of the initial meeting of the board and the annual meetings shall be at a time and place fixed by the director. Other meetings of the board shall be held upon written request of the director at a time and place designated by him or her, or upon the written request of any two members of the board at a time and place designated by them.

A majority of the board shall constitute a quorum.

A vacancy in the board membership shall not impair the right of the remaining members of the board to exercise any power or to perform any duty of the board, so long as the power is exercised or the duty performed by a quorum of the board. [2011 c 336 § 525; 1971 ex.s. c 253 § 21.]

19.16.340 Board—Records. All records of the board shall be kept in the office of the director. Copies of all records and papers of the board, certified to be true copies by the director, shall be received in evidence in all cases with like effect as the originals. All actions by the board which require publication, or any writing shall be over the signature of the director or his or her designee. [2011 c 336 § 526; 1971 ex.s. c 253 § 25.]

19.16.430 Violations—Operating agency without a license—Penalty—Return of fees or compensation. (1) Any person who knowingly operates as a collection agency or out-of-state collection agency without a license or knowingly aids and abets such violation is punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year or both.

(2) Any person who operates as a collection agency or out-of-state collection agency in the state of Washington without a valid license issued pursuant to this chapter shall not charge or receive any fee or compensation on any moneys received or collected while operating without a license or on any moneys received or collected while operating with a license but received or collected as a result of his, her, or its acts as a collection agency or out-of-state collection agency while not licensed hereunder. All such moneys collected or received shall be forthwith returned to the owners of the accounts on which the moneys were paid. [2011 c 336 § 527; 1994 c 195 § 10; 1973 1st ex.s. c 20 § 6; 1971 ex.s. c 253 § 34.]

19.16.470 Violations—Assurance of discontinuance—Effect. The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter from any person engaging in or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his, her, or its principal place of business, or in the alternative, in Thurston county.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose; however, proof of failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing an injunction as provided for in

RCW 19.16.460: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided therein, the attorney general may not accept an assurance of discontinuance without the consent of said prosecuting attorney. [2011 c 336 § 528; 1971 ex.s. c 253 § 38.]

19.16.500 Public bodies may retain collection agencies to collect public debts—Fees. (1)(a) Agencies, departments, taxing districts, political subdivisions of the state, counties, and cities may retain, by written contract, collection agencies licensed under this chapter for the purpose of collecting public debts owed by any person, including any restitution that is being collected on behalf of a crime victim.

(b) Any governmental entity as described in (a) of this subsection using a collection agency may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee incurred or to be incurred. The amount to be paid for collection services shall be left to the agreement of the governmental entity and its collection agency or agencies, but a contingent fee of up to fifty percent of the first one hundred thousand dollars of the unpaid debt per account and up to thirty-five percent of the unpaid debt over one hundred thousand dollars per account is reasonable, and a minimum fee of the full amount of the debt up to one hundred dollars per account is reasonable. Any fee agreement entered into by a governmental entity is presumptively reasonable.

(2) No debt may be assigned to a collection agency unless (a) there has been an attempt to advise the debtor (i) of the existence of the debt and (ii) that the debt may be assigned to a collection agency for collection if the debt is not paid, and (b) at least thirty days have elapsed from the time notice was attempted.

(3) Collection agencies assigned debts under this section shall have only those remedies and powers which would be available to them as assignees of private creditors.

(4) For purposes of this section, the term debt shall include fines and other debts, including the fee allowed under subsection (1)(b) of this section. [2011 c 57 § 2; 1997 c 387 § 1; 1982 c 65 § 1.]

Interest rate: RCW 43.17.240.

Chapter 19.25 RCW

REPRODUCED SOUND RECORDINGS

Sections

19.25.020	Reproduction of sound without consent of owner unlawful—Fine and penalty.
19.25.030	Use of recording of live performance without consent of owner unlawful—Fine and penalty.
19.25.040	Failure to disclose origin of certain recordings unlawful—Fine and penalty.

19.25.020 Reproduction of sound without consent of owner unlawful—Fine and penalty. (1) A person commits an offense if the person:

(a) Knowingly reproduces for sale or causes to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;

(b) Transports within this state, for commercial advantage or private financial gain, a recording with the knowledge

that the sounds have been reproduced or transferred without the consent of the owner; or

(c) Advertises, offers for sale, sells, or rents, or causes the sale, resale, or rental of or possesses for one or more of these purposes any recording that the person knows has been reproduced or transferred without the consent of the owner.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both if:

(i) The offense involves at least one thousand unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for up to three hundred sixty-four days, or both.

(3) This section does not affect the rights and remedies of a party in private litigation.

(4) This section applies only to recordings that were initially fixed before February 15, 1972. [2011 c 96 § 17; 2003 c 53 § 143; 1991 c 38 § 2; 1974 ex.s. c 100 § 2.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

19.25.030 Use of recording of live performance without consent of owner unlawful—Fine and penalty. (1) A person commits an offense if the person:

(a) For commercial advantage or private financial gain advertises, offers for sale, sells, rents, transports, causes the sale, resale, rental, or transportation of or possesses for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(b) With the intent to sell for commercial advantage or private financial gain records or fixes or causes to be recorded or fixed on a recording a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one thousand unauthorized recordings embodying sound or at least one hundred unauthorized audiovisual recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one

thousand unauthorized recordings embodying sound or more than ten but less than one hundred unauthorized audiovisual recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for up to three hundred sixty-four days, or both.

(3) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.

(4) For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

(5) This section does not affect the rights and remedies of a party in private litigation. [2011 c 96 § 18; 2003 c 53 § 144; 1991 c 38 § 3; 1974 ex.s. c 100 § 3.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

19.25.040 Failure to disclose origin of certain recordings unlawful—Fine and penalty. (1) A person is guilty of failure to disclose the origin of a recording when, for commercial advantage or private financial gain, the person knowingly advertises, or offers for sale, resale, or rent, or sells or resells, or rents, leases, or lends, or possesses for any of these purposes, any recording which does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket, or label of the recording.

(2)(a) An offense under this section is a class B felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one hundred unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section.

(b) An offense under this section is a class C felony punishable by a fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than ten but less than one hundred unauthorized recordings during a one hundred eighty-day period.

(c) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for up to three hundred sixty-four days, or both.

(3) This section does not affect the rights and remedies of a party in private litigation. [2011 c 96 § 19; 2003 c 53 § 145; 1991 c 38 § 4; 1974 ex.s. c 100 § 4.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

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

Chapter 19.27 RCW STATE BUILDING CODE

Sections

19.27.070 State building code council—Established—Membership—Travel expenses—Administrative, clerical assistance.

19.27.070 State building code council—Established—Membership—Travel expenses—Administrative, clerical assistance. There is hereby established a state building code council, to be appointed by the governor.

(1) The state building code council shall consist of fifteen members:

(a) Two members must be county elected legislative body members or elected executives;

(b) Two members must be city elected legislative body members or mayors;

(c) One member must be a local government building code enforcement official;

(d) One member must be a local government fire service official;

(e) One member shall represent general construction, specializing in commercial and industrial building construction;

(f) One member shall represent general construction, specializing in residential and multifamily building construction;

(g) One member shall represent the architectural design profession;

(h) One member shall represent the structural engineering profession;

(i) One member shall represent the mechanical engineering profession;

(j) One member shall represent the construction building trades;

(k) One member shall represent manufacturers, installers, or suppliers of building materials and components;

(l) One member must be a person with a physical disability and shall represent the disability community; and

(m) One member shall represent the general public.

(2) At least six of these fifteen members shall reside east of the crest of the Cascade mountains.

(3) The council shall include: Two members of the house of representatives appointed by the speaker of the house, one from each caucus; two members of the senate appointed by the president of the senate, one from each caucus; and an employee of the electrical division of the department of labor and industries, as ex officio, nonvoting members with all other privileges and rights of membership.

(4)(a) Terms of office shall be for three years, or for so long as the member remains qualified for the appointment.

(b) The council shall elect a member to serve as chair of the council for one-year terms of office.

(c) Any member who is appointed by virtue of being an elected official or holding public employment shall be removed from the council if he or she ceases being such an elected official or holding such public employment.

(d) Any member who is appointed to represent a specific private sector industry must maintain sufficiently similar employment or circumstances throughout the term of office to remain qualified to represent the specified industry.

Retirement or unemployment is not cause for termination. However, if a councilmember enters into employment outside of the industry he or she has been appointed to represent, then he or she shall be removed from the council.

(e) Any member who no longer qualifies for appointment under this section may not vote on council actions, but may participate as an ex officio, nonvoting member until a replacement member is appointed. A member must notify the council staff and the governor's office within thirty days of the date the member no longer qualifies for appointment under this section. The governor shall appoint a qualified replacement for the member within sixty days of notice.

(5) Before making any appointments to the building code council, the governor shall seek nominations from recognized organizations which represent the entities or interests identified in this section.

(6) Members shall not be compensated but shall receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) The department of enterprise services shall provide administrative and clerical assistance to the building code council. [2011 1st sp.s. c 43 § 244; 2010 c 275 § 1; (2010 c 271 § 301 repealed by 2011 1st sp.s. c 43 § 258); 1995 c 399 § 8; 1989 c 246 § 2; 1987 c 505 § 7; 1985 c 360 § 11; 1984 c 287 § 55; 1975-'76 2nd ex.s. c 34 § 59; 1974 ex.s. c 96 § 7.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

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

Additional notes found at www.leg.wa.gov

Chapter 19.27A RCW

ENERGY-RELATED BUILDING STANDARDS

Sections

19.27A.140 Definitions.

19.27A.140 Definitions. The definitions in this section apply to RCW 19.27A.130 through 19.27A.190 and 19.27A.020 unless the context clearly requires otherwise.

(1) "Benchmark" means the energy used by a facility as recorded monthly for at least one year and the facility characteristics information inputs required for a portfolio manager.

(2) "Conditioned space" means conditioned space, as defined in the Washington state energy code.

(3) "Consumer-owned utility" includes a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, a port district formed under Title 53 RCW, or a water-sewer district formed under Title 57 RCW, that is engaged in the business of distributing electricity to one or more retail electric customers in the state.

(4) "Cost-effectiveness" means that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

(5) "Council" means the state building code council.

(6) "Embodied energy" means the total amount of fossil fuel energy consumed to extract raw materials and to manufacture, assemble, transport, and install the materials in a building and the life-cycle cost benefits including the recyclability and energy efficiencies with respect to building materials, taking into account the total sum of current values for the costs of investment, capital, installation, operating, maintenance, and replacement as estimated for the lifetime of the product or project.

(7) "Energy consumption data" means the monthly amount of energy consumed by a customer as recorded by the applicable energy meter for the most recent twelve-month period.

(8) "Energy service company" has the same meaning as in RCW 43.19.670.

(9) "Enterprise services" means the department of enterprise services.

(10) "Greenhouse gas" and "greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(11) "Investment grade energy audit" means an intensive engineering analysis of energy efficiency and management measures for the facility, net energy savings, and a cost-effectiveness determination.

(12) "Investor-owned utility" means a corporation owned by investors that meets the definition of "corporation" as defined in RCW 80.04.010 and is engaged in distributing either electricity or natural gas, or both, to more than one retail electric customer in the state.

(13) "Major facility" means any publicly owned or leased building, or a group of such buildings at a single site, having ten thousand square feet or more of conditioned floor space.

(14) "National energy performance rating" means the score provided by the energy star program, to indicate the energy efficiency performance of the building compared to similar buildings in that climate as defined in the United States environmental protection agency "ENERGY STAR® Performance Ratings Technical Methodology."

(15) "Net zero energy use" means a building with net energy consumption of zero over a typical year.

(16) "Portfolio manager" means the United States environmental protection agency's energy star portfolio manager or an equivalent tool adopted by the department of enterprise services.

(17) "Preliminary energy audit" means a quick evaluation by an energy service company of the energy savings potential of a building.

(18) "Qualifying public agency" includes all state agencies, colleges, and universities.

(19) "Qualifying utility" means a consumer-owned or investor-owned gas or electric utility that serves more than twenty-five thousand customers in the state of Washington.

(20) "Reporting public facility" means any of the following:

(a) A building or structure, or a group of buildings or structures at a single site, owned by a qualifying public agency, that exceed ten thousand square feet of conditioned space;

(b) Buildings, structures, or spaces leased by a qualifying public agency that exceeds ten thousand square feet of conditioned space, where the qualifying public agency purchases energy directly from the investor-owned or consumer-owned utility;

(c) A wastewater treatment facility owned by a qualifying public agency; or

(d) Other facilities selected by the qualifying public agency.

(21) "State portfolio manager master account" means a portfolio manager account established to provide a single shared portfolio that includes reports for all the reporting public facilities. [2011 1st sp.s. c 43 § 245; 2010 c 271 § 305; 2009 c 423 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Chapter 19.28 RCW ELECTRICIANS AND ELECTRICAL INSTALLATIONS

Sections

19.28.131	Specialty electrical contractor license—Written warning, penalty—Violations of RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361—Schedule of penalties—Appeal.
19.28.271	Violations of RCW 19.28.161 through 19.28.271—Schedule of penalties—Appeal.
19.28.311	Electrical board.
19.28.341	Revocation or suspension of license—Grounds—Appeal to board—Fee—Costs.
19.28.490	Violation of chapter—Penalty—Appeal.

19.28.131 Specialty electrical contractor license—Written warning, penalty—Violations of RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361—Schedule of penalties—Appeal. Until July 1, 2007, the department shall issue a written warning to any specialty contractor, performing the scope of work defined by rule for the pump and irrigation or domestic pump specialties, not having a valid electrical contractor license. The warning will state that the contractor must be qualified for and apply for a specialty electrical contractor license under the requirements in RCW 19.28.041 within thirty calendar days of the warning. Only one warning will be issued to any contractor. If the contractor fails to comply with this section, the department shall issue a penalty or penalties as authorized in this section to the contractor. Any person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361 shall be assessed a penalty of not less than fifty dollars or more than ten thousand dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361. The department shall notify the person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.141 and

19.28.311 through 19.28.361 of the amount of the penalty and of the specific violation using a method by which the mailing can be tracked or the delivery can be confirmed sent to the last known address of the assessed party. Any penalty is subject to review by an appeal to the board. The filing of an appeal stays the effect of the penalty until the board makes its decision. The appeal shall be filed within twenty days after notice of the penalty is given to the assessed party using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. The notice shall be accompanied by a certified check for two hundred dollars, which shall be returned to the assessed party if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW. The board shall assign its hearings to an administrative law judge to conduct the hearing and issue a proposed decision and order. The board shall be allowed a minimum of twenty days to review a proposed decision and shall issue its decision no later than the next regularly scheduled board meeting. [2011 c 301 § 6; 2006 c 185 § 13; 2001 c 211 § 8; 1996 c 147 § 7; 1988 c 81 § 12; 1986 c 156 § 11; 1983 c 206 § 12; 1980 c 30 § 16; 1935 c 169 § 14; RRS § 8307-14. Formerly RCW 19.28.350.]

19.28.271 Violations of RCW 19.28.161 through 19.28.271—Schedule of penalties—Appeal. (1) It is unlawful for any person, firm, partnership, corporation, or other entity to employ an individual for purposes of RCW 19.28.161 through 19.28.271 who has not been issued a certificate of competency, a temporary permit, or a training certificate. It is unlawful for any individual to engage in the electrical construction trade or to maintain or install any electrical equipment or conductors without having in his or her possession a certificate of competency, a temporary permit, or a training certificate under RCW 19.28.161 through 19.28.271, and photo identification. The department may establish by rule a requirement that the individual also wear and visibly display his or her certificate or permit.

(2) Any person, firm, partnership, corporation, or other entity found in violation of RCW 19.28.161 through 19.28.271 shall be assessed a penalty of not less than fifty dollars or more than five hundred dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.161 through 19.28.271. An appeal may be made to the board as is provided in RCW 19.28.131. The appeal shall be filed within twenty days after the notice of the penalty is given to the assessed party using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. Any equipment maintained or installed by any person who does not possess a certificate of competency under RCW 19.28.161 through 19.28.271 shall not receive an electrical work permit and electrical service shall not be connected or

maintained to operate the equipment. Each day that a person, firm, partnership, corporation, or other entity violates RCW 19.28.161 through 19.28.271 is a separate violation.

(3) A civil penalty shall be collected in a civil action brought by the attorney general in the county wherein the alleged violation arose at the request of the department if any of RCW 19.28.161 through 19.28.271 or any rules adopted under RCW 19.28.161 through 19.28.271 are violated. [2011 c 301 § 7; 2009 c 36 § 6; 2001 c 211 § 20; 1996 c 147 § 9; 1988 c 81 § 16; 1986 c 156 § 17; 1983 c 206 § 22; 1980 c 30 § 13. Formerly RCW 19.28.620.]

Finding—Intent—2009 c 36: See note following RCW 18.106.020.

19.28.311 Electrical board. There is hereby created an electrical board, consisting of fifteen members to be appointed by the governor with the advice of the director of labor and industries as herein provided. It shall be the purpose and function of the board to advise the director on all matters pertaining to the enforcement of this chapter including, but not limited to, standards of electrical and telecommunications installation, minimum inspection procedures, and the adoption of rules pertaining to the electrical inspection division: PROVIDED, HOWEVER, That no rules shall be amended or repealed until the electrical board has first had an opportunity to consider any proposed amendments or repeals and had an opportunity to make recommendations to the director relative thereto. The members of the electrical board shall be selected and appointed as follows: One member shall be an employee or officer of a corporation or public agency generating or distributing electric power; one member must be an employee or officer of a facilities-based telecommunications service provider regulated by the Washington state utilities and transportation commission; three members shall be licensed electrical contractors: PROVIDED, That one of these members may be a representative of a trade association in the electrical industry; one member shall be a licensed telecommunications contractor; one member shall be an employee, or officer, or representative of a corporation or firm engaged in the business of manufacturing or distributing electrical and telecommunications materials, equipment, or devices; one member shall be a person with knowledge of the electrical industry, not related to the electrical industry, to represent the public; three members shall be certified electricians; one member shall be a telecommunications worker; one member shall be a licensed professional electrical engineer qualified to do business in the state of Washington and designated as a registered communications distribution designer; one member shall be an outside line worker; and one nonvoting member must be a building official from an incorporated city or town with an electrical inspection program established under RCW 19.28.141. The regular term of each member shall be four years: PROVIDED, HOWEVER, The original board shall be appointed on June 9, 1988, for the following terms: The first term of the member representing a corporation or public agency generating or distributing electric power shall serve four years; two members representing licensed electrical contractors shall serve three years; the member representing a manufacturer or distributor of electrical equipment or devices shall serve three years; the member representing the public and one member representing

licensed electrical contractors shall serve two years; the three members selected as certified electricians shall serve for terms of one, two, and three years, respectively; the member selected as the licensed professional electrical engineer shall serve for one year. In appointing the original board, the governor shall give due consideration to the value of continuity in membership from predecessor boards. Thereafter, the governor shall appoint or reappoint board members for terms of four years and to fill vacancies created by the completion of the terms of the original members. When new positions are created, the governor may appoint the initial members to the new positions to staggered terms of one to three years. The governor shall also fill vacancies caused by death, resignation, or otherwise for the unexpired term of such members by appointing their successors from the same business classification. The same procedure shall be followed in making such subsequent appointments as is provided for the original appointments. The board, at this first meeting shall elect one of its members to serve as chair. Any person acting as the chief electrical inspector shall serve as secretary of the board during his or her tenure as chief state inspector. Meetings of the board shall be held at least quarterly in accordance with a schedule established by the board. Each member of the board shall receive compensation in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 which shall be paid out of the electrical license fund, upon vouchers approved by the director of labor and industries. [2011 c 336 § 529; 2005 c 280 § 1; 2000 c 238 § 3; 1988 c 81 § 4; 1984 c 287 § 56; 1975-'76 2nd ex.s. c 34 § 60; 1969 ex.s. c 71 § 1; 1963 c 207 § 5. Formerly RCW 19.28.065.]

Appointment to electrical board—2005 c 280: "The governor shall appoint the member representing outside line workers within ninety days after July 24, 2005." [2005 c 280 § 2.]

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

Additional notes found at www.leg.wa.gov

19.28.341 Revocation or suspension of license—Grounds—Appeal to board—Fee—Costs. (1) The department has the power, in case of serious noncompliance with the provisions of this chapter, to revoke or suspend for such a period as it determines, any electrical or telecommunications contractor license or electrical or telecommunications contractor administrator certificate issued under this chapter. The department shall notify the holder of the license or certificate of the revocation or suspension using a method by which the mailing can be tracked or the delivery can be confirmed. A revocation or suspension is effective twenty days after the holder receives the notice. Any revocation or suspension is subject to review by an appeal to the board. The filing of an appeal stays the effect of a revocation or suspension until the board makes its decision. The appeal shall be filed within twenty days after notice of the revocation or suspension is given using a method by which the mailing can be tracked or the delivery can be confirmed sent to the address of the holder of the license or certificate as shown on the application for the license or certificate, and shall be effected by filing a written notice of appeal with the department, accompanied by a certified check for two hundred dollars, which shall be returned to the holder of the license or certifi-

cate if the decision of the department is not sustained by the board. The hearing shall be conducted in accordance with chapter 34.05 RCW. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund.

(2) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2011 c 301 § 8; 2000 c 238 § 4; 1997 c 58 § 844; 1996 c 241 § 5; 1988 c 81 § 10; 1986 c 156 § 10; 1983 c 206 § 11; 1935 c 169 § 7; RRS § 8307-7. Formerly RCW 19.28.310, 19.28.320.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

19.28.490 Violation of chapter—Penalty—Appeal.

Any person, firm, partnership, corporation, or other entity violating any of the provisions of this chapter may be assessed a penalty of not less than one hundred dollars or more than ten thousand dollars per violation. The department, after consulting with the board and receiving the board's recommendations, shall set by rule a schedule of penalties for violating this chapter. The department shall notify the person, firm, partnership, corporation, or other entity violating any of these provisions of the amount of the penalty and of the specific violation. The notice shall be sent using a method by which the mailing can be tracked or the delivery can be confirmed to the last known address of the assessed party. Penalties are subject to review by an appeal to the board. The filing of an appeal stays the effect of the penalty until the board makes its decision. The appeal shall be filed within twenty days after notice of the penalty is given to the assessed party, and shall be made by filing a written notice of appeal with the department. The notice shall be accompanied by a certified check for two hundred dollars, that shall be returned to the assessed party if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW. The board shall assign its hearings to an administrative law judge to conduct the hearing and issue a proposed decision and order. The board shall be allowed a minimum of twenty days to review a proposed decision and shall issue its decision no later than the next regularly scheduled board meeting. [2011 c 301 § 9; 2000 c 238 § 213.]

Additional notes found at www.leg.wa.gov

Chapter 19.29 RCW

ELECTRICAL CONSTRUCTION

Sections

19.29.010 Rules for use of electrical apparatus or construction.

19.29.010 Rules for use of electrical apparatus or construction. It shall be unlawful from and after the passage of this chapter for any officer, agent, or employee of the state of Washington, or of any county, city, or other political subdivision thereof, or for any other person, firm or corporation, or its officers, agents or employees, to run, place, erect, maintain, or use any electrical apparatus or construction, except as provided in the rules of this chapter.

Rule 1. No wire or cable, except the neutral, carrying a current of less than seven hundred fifty volts of electricity within the corporate limits of any city or town shall be run, placed, erected, maintained, or used on any insulator the center of which is less than thirteen inches from the center line of any pole. And no such wire, except the neutral, shall be run past any pole to which it is not attached at a distance of less than thirteen inches from the center line thereof. This rule shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure and the point of attachment to such building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole; nor to bridle or jumper wires on any pole which are attached to or connected with signal wires on the same pole; nor to any aerial cable as between such cable and any pole upon which it originates or terminates; nor to exclusive telephone or telegraph toll lines; nor to aerial cables containing telephone, telegraph, or signal wires, or wires continuing from same, where the cable is attached to poles on which no wires or cables other than the wires continuing from said cable are maintained, provided, that electric light or power wires or cables are in no case maintained on the same side of the street or highway on which said aerial cable is placed.

Rule 2. No wire or cable used to carry a current of over seven hundred fifty volts of electricity within the incorporate limits of any city or town shall be run, placed, erected, maintained, or used on any insulator the center of which is nearer than twenty-four inches to the center line of any pole. And no such wire or cable shall be run past any pole to which it is not attached at a distance of less than twenty-four inches from the center line thereof: PROVIDED, That this shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture, as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with transformers or other appliances on the same pole: PROVIDED FURTHER, That

where said wire or cable is run vertically, it shall be rigidly supported and where possible run on the ends of the cross-arms.

Rule 3. No wire or cable carrying a current of more than seven hundred fifty volts, and less than seventy-five hundred volts of electricity, shall be run, placed, erected, maintained, or used within three feet of any wire or cable carrying a current of seven hundred fifty volts or less of electricity; and no wire or cable carrying a current of more than seventy-five hundred volts of electricity shall be run, placed, erected, maintained, or used within seven feet of any wire or cable carrying less than seventy-five hundred volts: PROVIDED, That the foregoing provisions of this paragraph shall not apply to any wire or cable within buildings or other structures; nor where the same are run from under ground and placed vertically upon the pole; nor to any service wire or cable where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole: PROVIDED, That where run vertically, wires or cables shall be rigidly supported, and where possible run on the ends of the cross-arms: PROVIDED FURTHER, That as between any two wires or cables mentioned in Rules 1, 2, and 3 of this section, only the wires or cables last in point of time so run, placed, erected, or maintained, shall be held to be in violation of the provisions thereof.

Rule 4. No wire or cable used for telephone, telegraph, district messenger, or call bell circuit, fire or burglar alarm, or any other similar system, shall be run, placed, erected, maintained, or used on any pole at a distance of less than three feet from any wire or cable carrying a current of over three hundred volts of electricity; and in all cases (except those mentioned in exceptions to Rules 1, 2, and 3) where such wires or cables are run, above or below, or cross over or under electric light or power wires, or a trolley wire, a suitable method of construction, or insulation or protection to prevent contact shall be maintained as between such wire or cable and such electric light, power or trolley wire; and said methods of construction, insulation, or protection shall be installed by, or at the expense of the person owning the wire last placed in point of time: PROVIDED, That telephone, telegraph, or signal wires or cables operated for private use and not furnishing service to the public, may be placed less than three feet from any line carrying a voltage of less than seven hundred and fifty volts.

Rule 5. Transformers, either single or in bank, that exceed a total capacity of over ten K.W. shall be supported by a double cross-arm, or some fixture equally as strong. No transformer shall be placed, erected, maintained, or used on any cross-arm or other appliance on a pole upon which is placed a series electric arc lamp or arc light: PROVIDED, This shall not apply to a span wire supporting a lamp only. All aerial and underground transformers used for low potential distribution shall be subjected to an insulation test in accordance with the standardized rules of the American institute of electrical engineers. In addition to this each transformer shall be tested at rated line voltage prior to each installation and shall have attached to it a tag showing the date on

which the test was made, and the name of the person making the test.

Rule 6. No wire or cable, other than ground wires, used to conduct or carry electricity, shall be placed, run, erected, maintained, or used vertically on any pole without causing such wire or cable to be at all times sufficiently insulated the full length thereof to insure the protection of anyone coming in contact with said wire or cable.

Rule 7. The neutral point or wire of all transformer secondaries strung or erected for use in low potential distributing systems shall be grounded in all cases where the normal maximum difference of potential between the ground and any point in the secondary circuit will not exceed one hundred and fifty volts. When no neutral point or wire is accessible one side of the secondary circuit shall be grounded in the case of single phase transformers, and any one common point in the case of interconnected polyphase bank or banks of transformers. Where the maximum difference of potential between the ground and any point in the secondary circuit will, when grounded, exceed one hundred fifty volts, grounding shall be permitted. Such grounding shall be done in the manner provided in Rule 30.

Rule 8. In all cases where a wire or cable larger than No. 14 B.W.G. originates or terminates on insulators attached to any pin or other appliance, said wire or cable shall be attached to at least two insulators: PROVIDED HOWEVER, That this section shall not apply to service wires to buildings; nor to wires run vertically on a pole; nor to wires originating or terminating on strain insulators or circuit breakers; nor to telephone, telegraph or signal wires outside the limits of any incorporated city or town.

Rule 9. Fixtures placed or erected for the support of wires on the roofs of buildings shall be of sufficient strength to withstand all strains to which they may be subjected, due to the breaking of all wires on one side thereof, and except where insulated wires or cables are held close to fire walls by straps or rings, shall be of such height and so placed that all of the wires supported by such fixtures shall be at least seven feet above any point of roofs less than one-quarter pitch over which they pass or may be attached, and no roof fixtures or wire shall be so placed that they will interfere with the free passage of persons upon, over, to or from the roofs.

Rule 10. No guy wire or cable shall be placed, run, erected, maintained, or used within the incorporate limits of any city or town on any pole or appliance to which is attached any wire or cable used to conduct electricity without causing said guy wire or cable to be efficiently insulated with circuit breakers at all times at a distance of not less than eight feet nor more than ten feet measured along the line of said guy wire or cable from each end thereof: PROVIDED, No circuit breaker shall be required at the lower end of the guy wire or cable where the same is attached to a ground anchor, nor shall any circuit breaker be required where said guy wire or cable runs direct from a grounded messenger wire to a grounded anchor rod.

Rule 11. In all span wires used for the purpose of supporting trolley wires or series arc lamps there shall be at least two circuit breakers, one of which shall at all times be maintained no less than four feet nor more than six feet distant from the trolley wire or series arc lamp, and in cases where the same is supported by a building or metallic pole, the other

circuit breaker shall be maintained at the building or at the pole: PROVIDED, That in span wires which support two or more trolley wires no circuit breaker shall be required in the span wire between any two of the trolley wires: PROVIDED FURTHER, That in span wires supporting trolley wires attached to wooden poles only the circuit breaker adjacent to the trolley wire shall be required.

Rule 12. At all points where in case of a breakdown of trolley span wires, the trolley wire would be liable to drop within seven feet of the ground, there shall be double span wires and hangers placed at such points.

Rule 13. All energized wires or appliances installed inside of any building or vault, for the distribution of electrical energy, shall be sufficiently insulated, or so guarded, located, or arranged as to protect any person from injury.

Rule 14. The secondary circuit of current transformers, the casings of all potential regulators and arc light transformers, all metal frames of all switch boards, metal oil tanks used on oil switches except where the tank is part of the conducting system, all motor and generator frames, the entire frame of the crane and the tracks of all traveling cranes and hoisting devices, shall be thoroughly grounded, as provided in Rule 30.

Rule 15. All generators and motors having a potential of more than three hundred volts shall be provided with a suitable insulated platform or mat so arranged as to permit the attendant to stand upon such platform or mat when working upon the live parts of such generators or motors.

Rule 16. Suitable insulated platforms or mats shall be provided for the use of all persons while working on any live part of switchboards on which any wire or appliance carries a potential in excess of three hundred volts.

Rule 17. Every generator, motor, transformer, switch, or other similar piece of apparatus and device used in the generation, transmission or distribution of electrical energy in stations or substations, shall be either provided with a name plate giving the capacity in volts and amperes, or have this information stamped thereon in such a manner as to be clearly legible.

Rule 18. When lines of seven hundred fifty volts or over are cut out at the station or substation to allow employees to work upon them, they shall be short-circuited and grounded at the station, and shall in addition, if the line wires are bare, be short-circuited, and where possible grounded at the place where the work is being done.

Rule 19. All switches installed with overload protection devices, and all automatic overload circuit breakers must have the trip coils so adjusted as to afford complete protection against overloads and short circuits, and the same must be so arranged that no pole can be opened manually without opening all the poles, and the trip coils shall be instantly operative upon closing.

Rule 20. All feeders for electric railways must, before leaving the plant or substation, be protected by an approved circuit breaker which will cut off the circuit in case of an accidental ground or short circuit.

Rule 21. There shall be provided in all distributing stations a ground detecting device.

Rule 22. There shall be provided in all stations, plants, and buildings herein specified warning cards printed on red cardboard not less than two and one-quarter by four and one-

half inches in size, which shall be attached to all switches opened for the purpose of lineworkers or other employees working on the wires. The person opening any line switch shall enter upon said card the name of the person ordering the switch opened, the time opened, the time line was reported clear and by whom, and shall sign his or her own name.

Rule 23. No manhole containing any wire carrying a current of over three hundred volts shall be less than six feet from floor to inside of roof; if circular in shape it shall not be less than six feet in diameter; if square it shall be six feet from wall to wall: PROVIDED HOWEVER, That this paragraph shall not apply to any manhole in which it shall not be required that any person enter to perform work: PROVIDED FURTHER, That the foregoing provisions of this paragraph shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with this law within the space or location designated by the proper authorities.

Rule 24. All manholes containing any wires or appliances carrying electrical current shall be kept in a sanitary condition, free from stagnant water or seepage or other drainage which is offensive or dangerous to health, either by sewer connection or otherwise, while any person is working in the same.

Rule 25. No manhole shall have an opening to the outer air of less than twenty-six inches in diameter, and the cover of same shall be provided with vent hole or holes equivalent to three square inches in area.

Rule 26. No manhole shall have an opening which is, at the surface of the ground, within a distance of three feet at any point from any rail of any railway or streetcar track: PROVIDED, That this shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with the provisions of this paragraph: PROVIDED, That in complying with the provisions of this rule only the construction last in point of time performed, placed, or erected shall be held to be in violation thereof.

Rule 27. Whenever persons are working in any manhole whose opening to the outer air is less than three feet from the rail of any railway or streetcar track, a watchperson or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

Rule 28. All persons employed in manholes shall be furnished with insulated platforms so as to protect the workers while at work in the manholes: PROVIDED, That this paragraph shall not apply to manholes containing only telephone, telegraph, or signal wires or cables.

Rule 29. No work shall be permitted to be done on any live wire, cable, or appliance carrying more than seven hundred fifty volts of electricity by less than two competent and experienced persons, who, at all times while performing such work shall be in the same room, chamber, manhole or other place in which, or on the same pole on which, such work is being done: PROVIDED, That in districts where only one competent and experienced person is regularly employed, and a second competent and experienced person cannot be obtained without delay at prevailing rate of pay in said district, such work shall be permitted to be done by one competent and experienced person and a helper who need not be on the same pole on which said work is being done.

No work shall be permitted to be done in any manhole or subway on any live wire, cable, or appliance carrying more than three hundred volts of electricity by less than two competent and experienced persons, who at all times while performing such work shall be in the same manhole or subway in which such work is being done.

Rule 30. The grounding provided for in these rules shall be done in the following manner: By connecting a wire or wires not less than No. 6 B.&S. gauge to a water pipe of a metallic system outside of the meter, if there is one, or to a copper plate one-sixteenth inch thick and not less than three feet by six feet area buried in coke below the permanent moisture level, or to other device equally as efficient. The ground wire or wires of a direct current system of three or more wires shall not be smaller than the neutral wire at the central station, and not smaller than a No. 6 B.&S. gauge elsewhere: PROVIDED, That the maximum cross section area of any ground wire or wires at the central station need not exceed one million circular mils. The ground wires shall be carried in as nearly a straight line as possible, and kinks, coils, and short bends shall be avoided: PROVIDED, That the provisions of this rule shall not apply as to size to ground wires run from instrument transformers or meters. [2011 c 336 § 530; 2007 c 218 § 81; 1989 c 12 § 3; 1987 c 79 § 1; 1965 ex.s. c 65 § 1; 1913 c 130 § 1; RRS § 5435.] [1954 SLC-RO 29.]

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Chapter 19.30 RCW

FARM LABOR CONTRACTORS

Sections

19.30.030 Applicants—Qualifications—Fee—Liability insurance—
Farm labor contractor account.

19.30.030 Applicants—Qualifications—Fee—Liability insurance—Farm labor contractor account. (1) The director shall not issue to any person a license to act as a farm labor contractor until:

(a) Such person has executed a written application on a form prescribed by the director, subscribed and sworn to by the applicant, and containing (i) a statement by the applicant of all facts required by the director concerning the applicant's character, competency, responsibility, and the manner and method by which he or she proposes to conduct operations as a farm labor contractor if such license is issued, and (ii) the names and addresses of all persons financially interested, either as partners, stockholders, associates, profit sharers, or providers of board or lodging to agricultural employees in the proposed operation as a labor contractor, together with the amount of their respective interests;

(b) The director, after investigation, is satisfied as to the character, competency, and responsibility of the applicant;

(c) The applicant has paid to the director a license fee of: (i) Thirty-five dollars in the case of a farm labor contractor not engaged in forestation or reforestation, or (ii) one hundred dollars in the case of a farm labor contractor engaged in forestation or reforestation or such other sum as the director finds necessary, and adopts by rule, for the administrative costs of evaluating applications;

[2011 RCW Supp—page 362]

(d) The applicant has filed proof satisfactory to the director of the existence of a policy of insurance with any insurance carrier authorized to do business in the state of Washington in an amount satisfactory to the director, which insures the contractor against liability for damage to persons or property arising out of the contractor's operation of, or ownership of, any vehicle or vehicles for the transportation of individuals in connection with the contractor's business, activities, or operations as a farm labor contractor;

(e) The applicant has filed a surety bond or other security which meets the requirements set forth in RCW 19.30.040;

(f) The applicant executes a written statement which shall be subscribed and sworn to and shall contain the following declaration:

"With regards to any action filed against me concerning my activities as a farm labor contractor, I appoint the director of the Washington department of labor and industries as my lawful agent to accept service of summons when I am not present in the jurisdiction in which the action is commenced or have in any other way become unavailable to accept service"; and

(g) The applicant has stated on his or her application whether or not his or her contractor's license or the license of any of his or her agents, partners, associates, stockholders, or profit sharers has ever been suspended, revoked, or denied by any state or federal agency, and whether or not there are any outstanding judgments against him or her or any of his or her agents, partners, associates, stockholders, or profit sharers in any state or federal court arising out of activities as a farm labor contractor.

(2) The farm labor contractor account is created in the state treasury. All receipts from farm labor contractor licenses, security deposits, penalties, and donations must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for administering the farm labor contractor licensing program, subject to authorization from the director or the director's designee. [2011 1st sp.s. c 50 § 927; 1985 c 280 § 3; 1955 c 392 § 3.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Chapter 19.31 RCW

EMPLOYMENT AGENCIES

Sections

19.31.020 Definitions.
19.31.080 License required—Penalty.
19.31.090 Bond—Cash deposit—Action on bond or deposit—Procedure—Judgment.
19.31.170 Limitations on fee amounts—Refunds—Exceptions.
19.31.180 Posting of fee limitation and remedy provisions.
19.31.190 Rules of conduct—Complaints.
19.31.210 Enforcement.
19.31.220 Assurance of discontinuance of violation.
19.31.240 Service of process outside state.

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

(1) "Applicant," except when used to describe an applicant for an employment agency license, means any person,

whether employed or unemployed, seeking or entering into any arrangement for his or her employment or change of his or her employment through the medium or service of an employment agency.

(2) "Career guidance and counseling service" means any person, firm, association, or corporation conducting a business that engages in any of the following activities:

(a) Career assessment, planning, or testing through individual counseling or group seminars, classes, or workshops;

(b) Skills analysis, resume writing, and preparation through individual counseling or group seminars, classes, or workshops;

(c) Training in job search or interviewing skills through individual counseling or group seminars, classes, or workshops: PROVIDED, That the career guidance and counseling service does not engage in any of the following activities:

(i) Contacts employers on behalf of an applicant or in any way intercedes between employer and applicant;

(ii) Provides information on specific job openings;

(iii) Holds itself out as able to provide referrals to specific companies or individuals who have specific job openings.

(3) "Director" shall mean the director of licensing.

(4) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(5) "Employment agency" is synonymous with "agency" and shall mean any business in which any part of the business gross or net income is derived from a fee received from applicants, and in which any of the following activities are engaged in:

(a) The offering, promising, procuring, or attempting to procure employment for applicants;

(b) The giving of information regarding where and from whom employment may be obtained; or

(c) The sale of a list of jobs or a list of names of persons or companies accepting applications for specific positions, in any form.

In addition the term "employment agency" shall mean and include any person, bureau, employment listing service, employment directory, organization, or school which for profit, by advertisement or otherwise, offers, as one of its main objects or purposes, to procure employment for any person who pays for its services, or which collects tuition, or charges for service of any nature, where the main object of the person paying the same is to secure employment. It also includes any business that provides a resume to an individual and provides that person with a list of names to whom the resume may be sent or provides that person with preaddressed envelopes to be mailed by the individual or by the business itself, if the list of names or the preaddressed envelopes have been compiled and are represented by the business as having job openings. The term "employment agency" shall not include labor union organizations, temporary service contractors, proprietary schools operating within the scope of activities for which the school is licensed under chapter 28C.10 RCW, nonprofit schools and colleges, career guidance and counseling services, employment directories that are sold in a manner that allows the applicant to examine

the directory before purchase, theatrical agencies, farm labor contractors, or the Washington state employment agency.

(6) "Employment directory" means any business operated by any person that provides in any form, including written or verbal, lists of employers, does not provide lists of specified positions of employment, that holds itself out to applicants as able to provide information on employment in specific industries or geographical areas, and that charges a fee to the applicant for its services.

(7) "Employment listing service" means any business operated by any person that provides in any form, including written or verbal, lists of specified positions of employment available with any employer other than itself or that holds itself out to applicants as able to provide information about specific positions of employment available with any employer other than itself, and that charges a fee to the applicant for its services and does not set up interviews or otherwise intercede between employer and applicant.

(8) "Farm labor contractor" means any person, or his or her agent, who, for a fee, employs workers to render personal services in connection with the production of any farm products, to, for, or under the direction of an employer engaged in the growing, producing, or harvesting of farm products, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing, producing, or harvesting of farm products or who provides in connection with recruiting, soliciting, supplying, or hiring workers engaged in the growing, producing, or harvesting of farm products, one or more of the following services: Furnishes board, lodging, or transportation for such workers, supervises, times, checks, counts, sizes, or otherwise directs or measures their work; or disburses wage payments to such persons.

(9) "Fee" means anything of value. The term includes money or other valuable consideration or services or the promise of money or other valuable consideration or services, received directly or indirectly by an employment agency from a person seeking employment, in payment for the service.

(10) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent or employee of any of the foregoing.

(11) "Resume" means a document of the applicant's employment history that is approved, received, and paid for by the applicant.

(12) "Temporary service contractors" shall mean any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part time or temporary help basis to others.

(13) "Theatrical agency" means any person who, for a fee or commission, procures on behalf of an individual or individuals, employment or engagements for circus, vaudeville, the variety field, the legitimate theater, motion pictures, radio, television, phonograph recordings, transcriptions, opera, concert, ballet, modeling, or other entertainments, exhibitions, or performances. The term "theatrical agency" does not include any person charging an applicant a fee prior to or in advance of:

(a) Procuring employment for the applicant;

(b) Giving or providing the applicant information regarding where or from whom employment may be obtained;

(c) Allowing or requiring the applicant to participate in any instructional class, audition, or career guidance or counseling; or

(d) Allowing the applicant to be eligible for employment through the person. [2011 c 336 § 531; 1998 c 228 § 1; 1993 c 499 § 1; 1990 c 70 § 1; 1979 c 158 § 82; 1977 ex.s. c 51 § 1; 1969 ex.s. c 228 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

19.31.080 License required—Penalty. It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he or she has an employment agency license issued pursuant to the provisions of this chapter. [2011 c 336 § 532; 1969 ex.s. c 228 § 8.]

19.31.090 Bond—Cash deposit—Action on bond or deposit—Procedure—Judgment. (1) Before conducting any business as an employment agency each licensee shall file with the director a surety bond in the sum of two thousand dollars running to the state of Washington, for the benefit of any person injured or damaged as a result of any violation by the licensee or his or her agent of any of the provisions of this chapter or of any rule or regulation adopted by the director pursuant to RCW 19.31.070(1).

(2) In lieu of the surety bond required by this section the license applicant may file with the director a cash deposit or other negotiable security acceptable to the director: PROVIDED, HOWEVER, If the license applicant has filed a cash deposit, the director shall deposit such funds with the state treasurer. If the license applicant has deposited cash or other negotiable security with the director, the same shall be returned to the licensee at the expiration of one year after the employment agency's license has expired or been revoked, if no legal action has been instituted against the licensee or the surety deposit at the expiration of the year.

(3) Any person having a claim against an employment agency for any violation of the provisions of this chapter or any rule or regulation promulgated thereunder may bring suit upon such bond or deposit in an appropriate court of the county where the office of the employment agency is located or of any county in which jurisdiction of the employment agency may be had. Action upon such bond or deposit shall be commenced by serving and filing of the complaint within one year from the date of expiration of the employment agency license in force at the time the act for which the suit is brought occurred. A copy of the complaint shall be served by registered or certified mail upon the director at the time the suit is started, and the director shall maintain a record, available for public inspection, of all suits so commenced. Such service on the director shall constitute service on the surety and the director shall transmit the complaint or a copy thereof to the surety within five business days after it shall have been received. The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond, but in case claims pending at any one time exceed the amount of the bond, claims shall be satisfied in the order of judgment rendered. In the event that any final judgment shall impair

the liability of the surety upon bond so furnished or the amount of the deposit so that there shall not be in effect a bond undertaking or deposit in the full amount prescribed in this section, the director shall suspend the license of such employment agency until the bond undertaking or deposit in the required amount, unimpaired by unsatisfied judgment claims, shall have been furnished.

(4) In the event of a final judgment being entered against the deposit or security referred to in subsection (2) of this section, the director shall, upon receipt of a certified copy of the final judgment, order said judgment to be paid from the amount of the deposit or security. [2011 c 336 § 533; 1977 ex.s. c 51 § 4; 1969 ex.s. c 228 § 9.]

19.31.170 Limitations on fee amounts—Refunds—Exceptions. (1) If an applicant accepts employment by agreement with an employer and thereafter never reports for work, the gross fee charged to the applicant shall not exceed: (a) Ten percent of what the first month's gross salary or wages would be, if known; or (b) ten percent of the first month's drawing account. If the employment was to have been on a commission basis without any drawing account, then no fee may be charged in the event that the applicant never reports for work.

(2) If an applicant accepts employment on a commission basis without any drawing account, then the gross fee charged such applicant shall be a percentage of commissions actually earned.

(3) If an applicant accepts employment and if within sixty days of his or her reporting for work the employment is terminated, then the gross fee charged such applicant shall not exceed twenty percent of the gross salary, wages, or commission received by him or her.

(4) If an applicant accepts temporary employment as a domestic, household employee, baby sitter, agricultural worker, or day laborer, then the gross fee charged such applicant shall not be in excess of twenty-five percent of the first full month's gross salary or wages: PROVIDED, That where an applicant accepts employment as a domestic or household employee for a period of less than one month, then the gross fee charged such applicant shall not exceed twenty-five percent of the gross salary or wages paid.

(5) Any applicant requesting a refund of a fee paid to an employment agency in accordance with the terms of the approved fee schedule of the employment agency pursuant to this section shall file with the employment agency a form requesting such refund on which shall be set forth information reasonably needed and requested by the employment agency, including but not limited to the following: Circumstances under which employment was terminated, dates of employment, and gross earnings of the applicant.

(6) Refund requests which are not in dispute shall be made by the employment agency within thirty days of receipt.

(7) Subsections (1) through (6) of this section do not apply to employment listing services or employment directories. [2011 c 336 § 534; 1993 c 499 § 6; 1977 ex.s. c 51 § 7; 1969 ex.s. c 228 § 17.]

19.31.180 Posting of fee limitation and remedy provisions. Each licensee shall post the following in a conspicuous place in each office in which it conducts business: (1) The substance of RCW 19.31.150 through 19.31.170; and (2) a name and address provided by the director, in a form prescribed by him or her, of a person to whom complaints concerning possible violation of this chapter may be made. All words required to be posted pursuant to this section shall be printed in ten point bold face type. [2011 c 336 § 535; 1969 ex.s. c 228 § 18.]

19.31.190 Rules of conduct—Complaints. In addition to the other provisions of this chapter the following rules shall govern each and every employment agency:

(1) Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency;

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment;

(3) No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee; nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee;

(4) No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation except an employment listing service shall advertise it is an employment listing service;

(5) An employment directory shall include the following on all advertisements:

"Directory provides information on possible employers and general employment information but does not list actual job openings.";

(6) No licensee shall fail to state in any advertisement, proposal, or contract for employment that there is a strike or lockout at the place of proposed employment, if he or she has knowledge that such condition exists;

(7) No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer;

(8) When an applicant is referred to the same employer by two licensees, the fee shall be paid to the licensee who first contacted the applicant concerning the position for that applicant: PROVIDED, That the licensee has given the name of the employer to the applicant and has within five working days arranged an interview with the employer and the applicant was hired as the result of that interview;

(9) No licensee shall require in any manner that a potential employee or an employee of an employer make any contract with any lending agency for the purpose of fulfilling a financial obligation to the licensee;

(10) All job listings must be bona fide job listings. To qualify as a bona fide job listing the following conditions must be met:

(a) A bona fide job listing must be obtained from a representative of the employer that reflects an actual current job opening;

(b) A representative of the employer must be aware of the fact that the job listing will be made available to applicants by the employment listing service and that applicants will be applying for the job listing;

(c) All job listings and referrals must be current. To qualify as a current job listing the employment listing service shall contact the employer and verify the availability of the job listing no less than once per week;

(11) All listings for employers listed in employment directories shall be current. To qualify as a current employer, the employment directory must contact the employer at least once per month and verify that the employer is currently hiring;

(12) Any aggrieved person, firm, corporation, or public officer may submit a written complaint to the director charging the holder of an employment agency license with violation of this chapter and/or the rules and regulations adopted pursuant to this chapter. [2011 c 336 § 536; 1993 c 499 § 7; 1977 ex.s. c 51 § 8; 1969 ex.s. c 228 § 19.]

19.31.210 Enforcement. The director may refer such evidence as may be available to him or her concerning violations of this chapter or of any rule or regulation adopted hereunder to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose, who may, in their discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all persons subject to this chapter. [2011 c 336 § 537; 1969 ex.s. c 228 § 21.]

19.31.220 Assurance of discontinuance of violation. In the enforcement of this chapter, the attorney general and/or any said prosecuting attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county. [2011 c 336 § 538; 1969 ex.s. c 228 § 22.]

19.31.240 Service of process outside state. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which conduct has had impact in this state which this chapter reprehends. Such person shall be deemed to have thereby submitted himself or herself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185, as now or hereafter amended. [2011 c 336 § 539; 1969 ex.s. c 228 § 24.]

Chapter 19.34 RCW

WASHINGTON ELECTRONIC
AUTHENTICATION ACT

Sections

- 19.34.231 Signature of a unit of government required—City or county as certification authority—Unit of state government prohibited from being certification authority—Exceptions.
- 19.34.240 Private key—Control—Public disclosure exemption. (*Effective January 1, 2012.*)
- 19.34.420 Confidentiality of certain records—Limited access to state auditor.

19.34.231 Signature of a unit of government required—City or county as certification authority—Unit of state government prohibited from being certification authority—Exceptions. (1) If a signature of a unit of state or local government, including its appropriate officers or employees, is required by statute, administrative rule, court rule, or requirement of the office of financial management, that unit of state or local government may become a subscriber to a certificate issued by a licensed certification authority for purposes of conducting official public business with electronic records.

(2) A city or county may become a licensed certification authority under RCW 19.34.100 for purposes of providing services to local government, if authorized by ordinance adopted by the city or county legislative authority.

(3) A unit of state government, except the secretary, may not act as a certification authority. [2011 1st sp.s. c 43 § 809; 2011 c 183 § 2; 1999 c 287 § 12; 1997 c 27 § 10.]

Reviser's note: This section was amended by 2011 c 183 § 2 and by 2011 1st sp.s. c 43 § 809, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

19.34.240 Private key—Control—Public disclosure exemption. (*Effective January 1, 2012.*) (1) By accepting a certificate issued by a licensed certification authority, the subscriber identified in the certificate assumes a duty to exercise reasonable care to retain control of the private key and prevent its disclosure to a person not authorized to create the subscriber's digital signature. The subscriber is released from this duty if the certificate expires or is revoked.

(2) A private key is the personal property of the subscriber who rightfully holds it.

(3) A private key in the possession of a state agency or local agency, as those terms are defined by RCW 42.17A.005, is exempt from public inspection and copying under chapter 42.56 RCW. [2011 c 60 § 10; 2005 c 274 § 235; 1997 c 27 § 11; 1996 c 250 § 305.]

Effective date—2011 c 60: See RCW 42.17A.919.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Additional notes found at www.leg.wa.gov

19.34.420 Confidentiality of certain records—Limited access to state auditor. (1) The following information, when in the possession of the secretary or the state auditor for purposes of this chapter, shall not be made available for pub-

[2011 RCW Supp—page 366]

lic disclosure, inspection, or copying, unless the request is made under an order of a court of competent jurisdiction based upon an express written finding that the need for the information outweighs any reason for maintaining the privacy and confidentiality of the information or records:

(a) A trade secret, as defined by RCW 19.108.010; and

(b) Information regarding design, security, or programming of a computer system used for purposes of licensing or operating a certification authority or repository under this chapter.

(2) The state auditor, or an authorized agent, must be given access to all information referred to in subsection (1) of this section for the purpose of conducting audits under this chapter or under other law, but shall not make that information available for public inspection or copying except as provided in subsection (1) of this section. [2011 1st sp.s. c 43 § 810; 1998 c 33 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 19.36 RCW

CONTRACTS AND CREDIT AGREEMENTS
REQUIRING WRITINGS

Sections

- 19.36.010 Contracts, etc., void unless in writing.

19.36.010 Contracts, etc., void unless in writing. In the following cases, specified in this section, any agreement, contract, and promise shall be void, unless such agreement, contract, or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him or her lawfully authorized, that is to say: (1) Every agreement that by its terms is not to be performed in one year from the making thereof; (2) every special promise to answer for the debt, default, or misdoings of another person; (3) every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry; (4) every special promise made by an executor or administrator to answer damages out of his or her own estate; (5) an agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or a commission. [2011 c 336 § 540; 1905 c 58 § 1; RRS § 5825. Prior: Code 1881 § 2325; 1863 p 412 § 2; 1860 p 298 § 2; 1854 p 403 § 2.]

Chapter 19.48 RCW

HOTELS, LODGING HOUSES, ETC.—
RESTAURANTS

Sections

- 19.48.070 Liability for loss of baggage and other property—Limitation—Storage—Disposal.

19.48.070 Liability for loss of baggage and other property—Limitation—Storage—Disposal. Except as provided for in RCW 19.48.030, the proprietor, keeper, owner, operator, lessee, or manager, whether individual, partnership, or corporation, of a hotel, lodging house, or inn, shall not be liable for the loss or destruction of, or damage to any

personal property brought or sent into such hotel, lodging house, or inn, by or for any of the guests, boarders, or lodgers thereof, unless such loss, destruction, or damage is occasioned by the gross negligence of such proprietor, keeper, owner, operator, lessee, or manager, or his, her, their, or its agents, servants, or employees; but in no event shall such liability exceed the sum of two hundred dollars, unless such proprietor, keeper, owner, operator, lessee, or manager, shall have contracted in writing with such guest, boarder, or lodger to assume a greater liability: PROVIDED, HOWEVER, That in no event shall liability of the proprietor, keeper, owner, operator, lessee, or manager, or his, her, their, or its agents, servants or employees, of a hotel, lodging house, or inn exceed the following: For a guest, boarder, or lodger, paying twenty-five cents per day, for lodging, or for any person who is not a guest, boarder, or lodger, the liability for loss, destruction, or damage, shall not exceed the sum of fifty dollars for a trunk and contents, ten dollars for a suitcase or valise and contents, five dollars for a box, bundle, or package, and ten dollars for wearing apparel or miscellaneous effects. For a guest, boarder, or lodger, paying fifty cents a day for lodging, the liability for loss, destruction, or damage shall not exceed seventy-five dollars for a trunk and contents, twenty dollars for a suitcase or valise and contents, ten dollars for a box, bundle, or package and contents, and twenty dollars for wearing apparel and miscellaneous effects. For a guest, boarder, or lodger paying more than fifty cents per day for lodging, the liability for loss, destruction, or damage shall not exceed one hundred fifty dollars for a trunk and contents, fifty dollars for a suitcase or valise and contents, ten dollars for a box, bundle, or package and contents, and fifty dollars for wearing apparel and miscellaneous effects, unless in such case such proprietor, keeper, owner, operator, lessee, or manager of such hotel, lodging house, or inn, shall have consented in writing to assume a greater liability: AND PROVIDED FURTHER, Whenever any person shall suffer his or her baggage or property to remain in any hotel, lodging house, or inn, after leaving the same as a guest, boarder, or lodger, and after the relation of guest, boarder, or lodger between such person and the proprietor, keeper, owner, operator, lessee, or manager of such hotel, lodging house, or inn, has ceased, or shall forward or deliver the same to such hotel, lodging house, or inn, before, or without, becoming a guest, boarder, or lodger thereof, and the same shall be received into such hotel, lodging house, or inn, the liability of such proprietor, keeper, owner, operator, lessee, or manager thereof shall in no event exceed the sum of one hundred dollars, and such proprietor, keeper, owner, operator, lessee, or manager, may at his, her, their or its option, hold such baggage or property at the risk of such owner thereof; and when any baggage or property has been kept or stored by such hotel, lodging house, or inn, for six months after such relation of guest, boarder, or lodger has ceased, or when such relation does not exist, after six months from the receipt of such baggage or property in such hotel, lodging house, or inn, such proprietor, keeper, owner, operator, lessee, or manager, may, if he, she, they or it so desires, sell the same at public auction in the manner now or hereinafter provided by law for the sale of property to satisfy a hotel keeper's lien, and from the proceeds of such sale pay or reimburse himself or herself the expenses incurred for advertisement and sale, as well as any storage that may have

accrued, and any other amounts owing by such person to said hotel, lodging house, or inn: PROVIDED, That when any such baggage or property is received, kept, or stored therein after such relation does not exist, such proprietor, keeper, owner, operator, lessee, or manager, may, if he, she, or it, so desires, deliver the same at any time to a storage or warehouse company for storage, and in such event all responsibility or liability of such hotel, lodging house, or inn, for such baggage or property, or for storage charges thereon, shall thereupon cease and terminate. [2011 c 336 § 541; 1929 c 216 § 3; 1917 c 57 § 1; 1915 c 190 § 4; RRS § 6863. Formerly RCW 19.48.070 through 19.48.100.]

Chapter 19.52 RCW INTEREST—USURY

Sections

19.52.010 Rate in absence of agreement—Application to consumer leases.

19.52.010 Rate in absence of agreement—Application to consumer leases. (1) Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of twelve percent per annum where no different rate is agreed to in writing between the parties: PROVIDED, That with regard to any transaction heretofore or hereafter entered into subject to this section, if an agreement in writing between the parties evidencing such transaction provides for the payment of money at the end of an agreed period of time or in installments over an agreed period of time, then such agreement shall constitute a writing for purposes of this section and satisfy the requirements thereof. The discounting of commercial paper, where the borrower makes himself or herself liable as maker, guarantor, or indorser, shall be considered as a loan for the purposes of this chapter.

(2) A lease shall not be considered a loan or forbearance for the purposes of this chapter if:

(a) It constitutes a "consumer lease" as defined in RCW 63.10.020;

(b) It constitutes a lease-purchase agreement under chapter 63.19 RCW; or

(c) It would constitute such "consumer lease" but for the fact that:

(i) The lessee was not a natural person;

(ii) The lease was not primarily for personal, family, or household purposes; or

(iii) The total contractual obligation exceeded twenty-five thousand dollars. [2011 c 336 § 542; 1992 c 134 § 13. Prior: 1983 c 309 § 1; 1983 c 158 § 6; 1981 c 80 § 1; 1899 c 80 § 1; RRS § 7299; prior: 1895 c 136 § 1; 1893 c 20 § 1; Code 1881 § 2368; 1863 p 433 § 1; 1854 p 380 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 19.60 RCW PAWNBROKERS AND SECONDHAND DEALERS

Sections

19.60.010 Definitions.

19.60.025 Duty to record information—Precious metal property.

19.60.042 Report to chief law enforcement officer—Precious metal dealers.

19.60.057	Retention of precious metal property—Inspection.
19.60.067	Secondhand precious metal dealers—Prohibited acts—Penalty.
19.60.077	Precious metal dealers—Licensure required.
19.60.085	Exemptions.
19.60.095	Precious metal sales—Hosted home parties.

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

(1) "Loan period" means the period of time from the date the loan is made until the date the loan is paid off, the loan is in default, or the loan is refinanced and new loan documents are issued, including all grace or extension periods.

(2) "Melted metals" means metals derived from metal junk or precious metals that have been reduced to a melted state from other than ore or ingots which are produced from ore that has not previously been processed.

(3) "Metal junk" means any metal that has previously been milled, shaped, stamped, or forged and that is no longer useful in its original form, except precious metals.

(4) "Nonmetal junk" means any nonmetal, commonly discarded item that is worn out, or has outlasted its usefulness as intended in its original form except nonmetal junk does not include an item made in a former period which has enhanced value because of its age.

(5) "Pawnbroker" means every person engaged, in whole or in part, in the business of loaning money on the security of pledges of personal property, or deposits or conditional sales of personal property, or the purchase or sale of personal property.

(6) "Precious metals" means gold, silver, and platinum.

(7) "Secondhand dealer" means every person engaged in whole or in part in the business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, secondhand property including metal junk, melted metals, precious metals, whether or not the person maintains a fixed place of business within the state. Secondhand dealer also includes persons or entities conducting business, more than three times per year, at flea markets or swap meets.

(8) "Secondhand precious metal dealer" means any person or entity engaged in whole or in part in the commercial activity or business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, more than three times per year, secondhand property that is a precious metal, whether or not the person or entity maintains a permanent or fixed place of business within the state, or engages in the business at flea markets or swap meets. The terms "precious metal" and "secondhand property," for purposes of transactions by a secondhand precious metal dealer, do not include: (a) Gold, silver, or platinum coins, or other precious metal coins, that are legal tender, or precious metal coins that have numismatic or precious metal value, (b) gold, silver, platinum, or other precious metal bullion, or (c) gold, silver, platinum, or other precious metal dust, flakes, or nuggets.

(9) "Secondhand property" means any item of personal property offered for sale which is not new, including metals in any form, except postage stamps, coins that are legal tender, bullion in the form of fabricated hallmarked bars, used books, and clothing of a resale value of seventy-five dollars or less, except furs.

(10) "Transaction" means a pledge, or the purchase of, or consignment of, or the trade of any item of personal property by a pawnbroker or a secondhand dealer from a member of the general public. [2011 c 289 § 2; 1995 c 133 § 1; 1991 c 323 § 1; 1985 c 70 § 1; 1984 c 10 § 1; 1981 c 279 § 3; 1909 c 249 § 235; RRS § 2487. FORMER PARTS OF SECTION: (i) 1909 c 249 § 236; RRS § 2488, now codified as RCW 19.60.015. (ii) 1939 c 89 § 1; RRS § 2488-1, now codified as RCW 19.60.065.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2011 c 289: "The legislature finds:

(1) The market price of gold has increased significantly in recent years and there has been a proliferation of secondhand dealers, including temporary, transient secondhand businesses, engaging in "cash for gold" type precious metal transactions. Frequently, these "cash for gold" type operations are operated by persons desiring to exploit unsuspecting consumers based on current market conditions;

(2) The increasing number of "cash for gold" type transactions in communities and neighborhoods throughout Washington has been linked to increased crimes involving the theft of gold and other precious metal objects, including home burglaries, robberies, and other crimes, resulting in depressed home values and other threats to the health, safety, and welfare of Washington state residents; and

(3) With the growing number of precious metal transactions, there is a corresponding significant increase in the number of "cash for gold" type storefront businesses, including temporary, transient secondhand businesses, in Washington state which may not be consistent with the quality of life and personal security sought by communities and neighborhoods and the state as a whole.

Therefore, to better protect legitimate owners, consumers, and secondhand dealers, the legislature intends to establish and implement stricter standards relating to transactions involving property consisting of gold and other precious metals." [2011 c 289 § 1.]

19.60.025 Duty to record information—Precious metal property. (1) For any transaction involving property consisting of a precious metal bought or received from an individual, every secondhand precious metal dealer doing business in this state shall maintain wherever that business is conducted a record in which shall be legibly written in the English language, at the time of each transaction, the following information:

(a) The signature of the person with whom the transaction is made;

(b) The time and date of the transaction;

(c) The name of the person or employee or the identification number of the person or employee conducting the transaction;

(d) The name, date of birth, sex, height, weight, race, and residential address and telephone number of the person with whom the transaction is made;

(e) A complete description of the precious metal property pledged, bought, or consigned, including the brand name, serial number, model number or name, any initials or engraving, size, pattern, and color of stone or stones;

(f) The price paid;

(g) The type and identifying number of identification used by the person with whom the transaction was made, which shall consist of a valid driver's license or identification card issued by any state or two pieces of identification issued by a governmental agency, one of which shall be descriptive of the person identified, and a full copy of both sides of each piece of identification used by the person with whom the

transaction was made. At all times, one piece of current government issued picture identification will be required; and

(h) The nature of the transaction, a number identifying the transaction, the store identification as designated by the applicable law enforcement agency, or the name and address of the business or location, including the street address, and room number if appropriate, and the name of the person or employee conducting the transaction, and the location of the property.

(2) The records required in subsection (1) of this section shall at all times during the ordinary hours of business, or at reasonable times if ordinary hours of business are not kept, be open to the inspection by any commissioned law enforcement officer of the state or any of its political subdivisions, and shall be maintained wherever that business is conducted for three years following the date of the transaction. [2011 c 289 § 3.]

Findings—Intent—2011 c 289: See note following RCW 19.60.010.

19.60.042 Report to chief law enforcement officer—Precious metal dealers. If the applicable chief of police or the county's chief law enforcement officer has compiled and published a list of persons who have been convicted of any crime involving theft, then a secondhand precious metal dealer shall utilize such a list for any transaction involving property other than property consisting of a precious metal as required by the applicable chief of police or the county's chief law enforcement officer. [2011 c 289 § 5.]

Findings—Intent—2011 c 289: See note following RCW 19.60.010.

19.60.057 Retention of precious metal property—Inspection. (1) Property consisting of a precious metal bought or received from an individual on consignment by any secondhand precious metal dealer with a permanent place of business in the state may not be removed from that place of business except consigned property returned to the owner, for a total of thirty days after the receipt of the property. Property shall at all times during the ordinary hours of business be open to inspection to any commissioned law enforcement officer of the state or any of its political subdivisions.

(2) Property consisting of a precious metal bought or received from an individual on consignment by any secondhand precious metal dealer without a permanent place of business in the state must be stored and held within the city or county in which the property was received, except consigned property returned to the owner, for a total of thirty days after receipt of the property. The property shall be available within the appropriate jurisdiction for inspection at reasonable times by any commissioned law enforcement officer of the state or any of its political subdivisions.

(3) Subsections (1) and (2) of this section do not apply when the property consisting of a precious metal was bought or received from a pawn shop, jeweler, secondhand dealer, or secondhand precious metal dealer who must provide a signed declaration showing the property is not stolen. The declaration may be included as part of the transactional record required under this subsection, or on a receipt for the transaction. The declaration must state substantially the following: "I, the undersigned, affirm under penalty of law that the prop-

erty that is subject to this transaction is not to the best of my knowledge stolen property." [2011 c 289 § 4.]

Findings—Intent—2011 c 289: See note following RCW 19.60.010.

19.60.067 Secondhand precious metal dealers—Prohibited acts—Penalty. (1) It is a gross misdemeanor for:

(a) A secondhand precious metal dealer to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under RCW 19.60.025, 19.60.057, 19.60.042, 19.60.077, and 19.60.095 involving property consisting of precious metal;

(b) A secondhand precious metal dealer to receive any precious metal property from any person known to the secondhand precious metal dealer as having been convicted of burglary, robbery, theft, or possession of or receiving stolen property within the past ten years whether the person is acting in his or her own behalf or as the agent of another; or

(c) A secondhand precious metal dealer to knowingly violate any other provision relating to precious metals under RCW 19.60.025, 19.60.057, 19.60.042, 19.60.077, and 19.60.095.

(2) It is a class C felony for a secondhand precious metal dealer to commit a second or subsequent violation of subsection (1) of this section involving property consisting of a precious metal. [2011 c 289 § 7.]

Findings—Intent—2011 c 289: See note following RCW 19.60.010.

19.60.077 Precious metal dealers—Licensure required. No secondhand precious metal dealer doing business in this state may operate a business without first obtaining a business license from the local government in which the business is situated. [2011 c 289 § 6.]

Findings—Intent—2011 c 289: See note following RCW 19.60.010.

19.60.085 Exemptions. The provisions of this chapter do not apply to transactions conducted by the following:

(1) Motor vehicle dealers licensed under chapter 46.70 RCW;

(2) Vehicle wreckers, hulk haulers, and scrap processors licensed under chapter 46.79 or 46.80 RCW;

(3) Persons giving an allowance for the trade-in or exchange of secondhand property on the purchase of other merchandise of the same kind of greater value; and

(4) Persons in the business of buying or selling empty food and beverage containers or metal or nonmetal junk, in compliance with chapter 19.290 RCW. [2011 c 289 § 8; 2000 c 171 § 56; 1985 c 70 § 2; 1984 c 10 § 2.]

Findings—Intent—2011 c 289: See note following RCW 19.60.010.

19.60.095 Precious metal sales—Hosted home parties. (1) For purposes of this section, "hosted home party" means a gathering of persons at a private residence where a host or hostess has invited friends or other guests into his or her residence where individual person-to-person sales of precious metals occur.

(2) A host or hostess must be the owner, renter, or lessee of the private residence where the hosted home party takes place.

(3) A secondhand precious metal dealer who attends a hosted home party and purchases or sells precious metals from the invited guests must issue a receipt for each item sold or purchased at the hosted home party.

(4) The secondhand precious metal dealer must include on every receipt the following: (a) The name, residential address, telephone number, and driver's license number of the person hosting the home party; (b) the name, residential address, telephone number, and driver's license number of the person selling the item; (c) the name, residential address, telephone number, and driver's license number of the person purchasing the item; (d) a complete description of the item being sold, including the brand name, serial number, model number or name, any initials or engraving, size, pattern, and color of stone or stones; (e) time and date of the transaction; and (f) the amount and form of any consideration paid for the item.

(5) The secondhand precious metal dealer must make four copies of each transaction receipt: One for the seller, one for the host or hostess, one for the purchaser, and one for local authorities, if they should ask. The secondhand precious metal dealer and the host shall maintain copies of all transaction receipts and records for three years following the date of the precious metal transaction.

(6) A secondhand precious metal dealer of a hosted home party who purchases precious metals at a hosted home party and complies with this section is otherwise exempt from RCW 19.60.025, 19.60.057, and 19.60.042. [2011 c 289 § 9.]

Findings—Intent—2011 c 289: See note following RCW 19.60.010.

Chapter 19.64 RCW

RADIO BROADCASTING

Sections

- 19.64.010 Liability of owner or operator limited.
19.64.020 Speaker or sponsor liability not limited.

19.64.010 Liability of owner or operator limited.

Where the owner, licensee, or operator of a radio or television broadcasting station, or the agents or employees thereof, has required a person speaking over said station to submit a written copy of his or her script prior to such broadcast and has cut such speaker off the air as soon as reasonably possible in the event such speaker deviates from such written script, said owner, licensee, or operator, or the agents or employees thereof, shall not be liable for any damages, for any defamatory statement published or uttered by such person in or as a part of such radio or television broadcast unless such defamatory statements are contained in said written script. [2011 c 336 § 543; 1943 c 229 § 1; Rem. Supp. 1943 § 998-1.]

19.64.020 Speaker or sponsor liability not limited.

Nothing contained shall be construed as limiting the liability of any speaker or his or her sponsor or sponsors for defamatory statements made by such speaker in or as a part of any such broadcast. [2011 c 336 § 544; 1943 c 229 § 2; Rem. Supp. 1943 § 998-2.]

[2011 RCW Supp—page 370]

Chapter 19.68 RCW

REBATING BY PRACTITIONERS OF HEALING PROFESSIONS

Sections

- 19.68.030 License may be revoked or suspended.

19.68.030 License may be revoked or suspended. The license of any person so licensed may be revoked or suspended if he or she has directly or indirectly requested, received, or participated in the division, transference, assignment, rebate, splitting, or refunding of a fee for, or has directly or indirectly requested, received, or profited by means of a credit or other valuable consideration as a commission, discount, or gratuity in connection with the furnishing of medical, surgical, or dental care, diagnosis or treatment or service, including X-ray examination and treatment, or for or in connection with the sale, rental, supplying or furnishing of clinical laboratory service or supplies, X-ray services or supplies, inhalation therapy service or equipment, ambulance service, hospital or medical supplies, physiotherapy or other therapeutic service or equipment, artificial limbs, teeth, or eyes, orthopedic or surgical appliances or supplies, optical appliances, supplies or equipment, devices for aid of hearing, drugs, medication or medical supplies or any other goods, services or supplies prescribed for medical diagnosis, care or treatment, except payment, not to exceed thirty-three and one-third percent of any fee received for X-ray examination, diagnosis, or treatment, to any hospital furnishing facilities for such examination, diagnosis, or treatment. [2011 c 336 § 545; 1965 ex.s. c 58 § 3. Prior: 1949 c 204 § 3; Rem. Supp. 1949 § 10185-16.]

Chapter 19.72 RCW

SURETYSHIP

Sections

- 19.72.070 Subrogation of surety.
19.72.090 Default by surety—Indemnity.
19.72.101 Failure of creditor to proceed—Discharge of surety.
19.72.130 Release from official's, executor's, licensee's, etc., bond—Effective date—Failure to give new bond, effect.
19.72.160 Assets—Safekeeping agreements—Joint control of deposits.

19.72.070 Subrogation of surety. When any defendant, surety in a judgment or special bail or replevin or surety in a delivery bond or replevin bond, or any person being surety in any bond whatever, has been or shall be compelled to pay any judgment or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer or other surety upon his or her official bond shall be compelled to pay any judgment or any part thereof by reason of any default of such officer, except for failing to pay over money collected, or for wasting property levied upon, the judgment shall not be discharged by such payment, but shall remain in force for the use of the bail, surety, officer, or other person making such payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for his or her use. [2011 c 336 § 546; Code 1881 § 648; RRS § 978. Prior: 1877 p 134 § 651; 1869 p 151 § 588; 1854 p 211 § 430.]

19.72.090 Default by surety—Indemnity. No surety or his or her representative shall confess judgment or suffer judgment by default in any case where he or she is notified that there is a valid defense, if the principal will enter himself or herself defendant to the action and tender to the surety or his or her representatives good security to indemnify him or her, to be approved by the court. [2011 c 336 § 547; Code 1881 § 650; RRS § 980. Prior: 1877 p 135 § 653; 1869 p 151 § 590; 1854 p 211 § 432.]

19.72.101 Failure of creditor to proceed—Discharge of surety. If the creditor or obligee shall not proceed within a reasonable time to bring his or her action upon such contract, and prosecute the same to judgment and execution, the surety shall be discharged from all liability thereon. [2011 c 336 § 548; Code 1881 § 645; RRS § 975. Prior: 1877 p 134 § 648; 1869 p 150 § 585; 1854 p 210 § 427. Formerly RCW 19.72.100, part.]

19.72.130 Release from official’s, executor’s, licensee’s, etc., bond—Effective date—Failure to give new bond, effect. On and after the date fixed in the notice as the termination date the surety shall be released from subsequent liability on such bond; and, unless before the date fixed in such notice as the termination date by the surety, a new bond shall be filed with sufficient and satisfactory surety as required by law under which the bond was originally furnished and filed, the office, position, or trust in the case of a public office, guardian, executor, administrator, receiver, or trustee shall become vacant and a successor shall be appointed as provided by law; and in case of a license, certificate, permit, or franchise, the same shall become null and void: PROVIDED, HOWEVER, That no surety shall be released on the bond of any guardian, executor, administrator, receiver, or trustee until such fiduciary shall have furnished a new bond with surety approved by the court, or until his or her successor has been appointed and has qualified and taken over the fiduciary assets. Said notice of withdrawal shall be final and not subject to cancellation by said surety and said license, certificate, permit, or franchise can only be continued upon filing a new bond as above provided. [2011 c 336 § 549; 1937 c 145 § 3; RRS § 9944.] [SLC-RO-17.]

19.72.160 Assets—Safekeeping agreements—Joint control of deposits. It shall be lawful for any party of whom a bond, undertaking, or other obligation is required, to agree with his or her surety or sureties for the deposit of any or all moneys and assets for which he or she and his or her surety or sureties are or may be held responsible, with a bank, savings bank, savings and loan association, safe deposit or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of court, or a judge thereof made on such notice to such surety or sureties as such court or judge may direct: PROVIDED, HOWEVER, That such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of said bond. [2011 c 336 § 550; 1953 c 46 § 1.]

Chapter 19.77 RCW

TRADEMARK REGISTRATION

Sections

- 19.77.030 Application for registration—Fee—Rules—Corrections—Amendment for change in categories—Certificates issued in error.
- 19.77.130 Fraudulent registration—Financial liability.

19.77.030 Application for registration—Fee—Rules—Corrections—Amendment for change in categories—Certificates issued in error. (1) Subject to the limitations set forth in this chapter, any person who has adopted and is using a trademark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that trademark setting forth, but not limited to, the following information:

(a) The name and business address of the applicant, and, if the applicant is a corporation, its state of incorporation;

(b) The particular goods or services in connection with which the trademark is used and the class in which such goods or services fall;

(c) The manner in which the trademark is placed on or affixed to the goods or containers, or displayed in connection with such goods, or used in connection with the sale or advertising of the services;

(d) The date when the trademark was first used with such goods or services anywhere and the date when it was first used with such goods or services in this state by the applicant or his or her predecessor in business;

(e) A statement that the trademark is presently in use in this state by the applicant;

(f) A statement that the applicant believes himself or herself to be the owner of the trademark and believes that no other person has the right to use such trademark in connection with the same or similar goods or services in this state either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion or mistake or to deceive; and

(g) Such additional information or documents as the secretary of state may reasonably require.

(2) A single application for registration of a trademark may specify all goods or services in a single class or in multiple classes for which the trademark is actually being used.

(3) The application must be signed by the applicant individual, or by a member of the applicant firm, or by an officer of the applicant corporation, association, union, or other organization.

(4) The application must be accompanied by three specimens or facsimiles of the trademark for each of the goods or services for which its registration is requested, and a filing fee, as set by rule by the secretary of state, payable to the secretary of state. The fee established by the secretary may vary based upon the number of categories listed in the application.

(5) An applicant may correct an application previously filed by the secretary of state, within ninety days of the original filing, if the application contains an incorrect statement or the application was defectively executed, signed, or acknowledged. An application is corrected by filing a form provided by the secretary of state, and accompanied by a filing fee established by the secretary by rule. The correction

may not change the mark itself. A corrected application is effective on the effective date of the document it corrects, except that it is effective on the date the correction is filed as to persons relying on the uncorrected document and adversely affected by the correction.

(6) An applicant may amend an application previously filed by the secretary of state if the applicant changes the categories in which it does business. An application is amended by filing a form provided by the secretary of state, accompanied by three specimens or facsimiles of the trademark for any new or additional goods or services for which the amendment is requested, and a filing fee established by the secretary by rule. The amendment or correction may not change the mark itself. An amended application is effective on the date it is filed.

(7) If the secretary of state determines within ninety days of issuance, that a certificate of registration was issued in error, then the secretary may cancel the certificate of registration. The secretary shall promptly notify the registrant of the cancellation in writing. The registrant may petition the superior court of Thurston county for review of the cancellation within sixty days. [2011 c 336 § 551; 2010 1st sp.s. c 29 § 9; 1998 c 39 § 1; 1994 c 60 § 1; 1989 c 72 § 3; 1982 c 35 § 181; 1955 c 211 § 3.]

Intent—2010 1st sp.s. c 29: See note following RCW 23B.01.530.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

19.77.130 Fraudulent registration—Financial liability. Any person who shall for himself or herself, or on behalf of any other person, procure the registration of any trademark by the secretary of state under the provisions of this chapter, by knowingly making any false or fraudulent representation or declaration, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction, together with costs of such action including reasonable attorneys' fees. [2011 c 336 § 552; 1989 c 72 § 8; 1955 c 211 § 13.]

Chapter 19.80 RCW TRADE NAMES

Sections

19.80.005	Definitions.
19.80.010	Registration required.
19.80.025	Changes in registration—Filing notice of change.
19.80.045	Rules—Fees.
19.80.075	Collection and deposit of fees.
19.80.900	Severability—1984 c 130.

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

(1) "Business" means an occupation, profession, or employment engaged in for the purpose of seeking a profit.

(2) "Department" means the department of revenue.

(3) "Person" means any individual, partnership, limited liability company, or corporation conducting or having an interest in a business in the state.

(4) "Trade name" means a word or name, or any combination of a word or name, used by a person to identify the person's business which:

(a) Is not, or does not include, the true and real name of all persons conducting the business; or

(b) Includes words which suggest additional parties of interest such as "company," "and sons," or "and associates."

(5) "True and real name" means:

(a) The surname of an individual coupled with one or more of the individual's other names, one or more of the individual's initials, or any combination;

(b) The designation or appellation by which an individual is best known and called in the business community where that individual transacts business, if this is used as that individual's legal signature;

(c) The registered corporate name of a domestic corporation as filed with the secretary of state;

(d) The registered corporate name of a foreign corporation authorized to do business within the state of Washington as filed with the secretary of state;

(e) The registered partnership name of a domestic limited partnership as filed with the secretary of state;

(f) The registered partnership name of a foreign limited partnership as filed with the secretary of state; or

(g) The name of a general partnership which includes in its name the true and real names, as defined in (a) through (f) of this subsection, of each general partner as required in RCW 19.80.010. [2011 c 298 § 13; 2000 c 174 § 1; 1996 c 231 § 2; 1984 c 130 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

19.80.010 Registration required. Each person or persons who carries on, conducts, or transacts business in this state under any trade name must register that trade name with the department as provided in this section.

(1) Sole proprietorship or general partnership: The registration must set forth the true and real name or names of each person conducting the same, together with the post office address or addresses of each such person and the name of the general partnership, if applicable.

(2) Foreign or domestic limited partnership: The registration must set forth the limited partnership name as filed with the office of the secretary of state.

(3) Foreign or domestic limited liability company: The registration must set forth the limited liability company name as filed with the office of the secretary of state.

(4) Foreign or domestic corporation: The registration must set forth the corporate name as filed with the office of the secretary of state. [2011 c 298 § 14; 2000 c 174 § 2; 1996 c 231 § 3; 1984 c 130 § 3; 1979 ex.s. c 22 § 1; 1907 c 145 § 1; RRS § 9976.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

19.80.025 Changes in registration—Filing notice of change. (1) A notice of change must be filed with the department when a change occurs in:

(a) The true and real name of a person conducting a business with a trade name registered under this chapter; or

(b) Any mailing address set forth on the registration or any subsequently filed notice of change.

(2) A notice of cancellation must be filed with the department when use of a trade name is discontinued.

(3) A notice of cancellation, together with a new registration, must be filed before conducting or transacting any business when:

(a) An addition, deletion, or any change of person or persons conducting business under the registered trade name occurs; or

(b) There is a change in the wording or spelling of the trade name since initial registration or renewal. [2011 c 298 § 15; 2000 c 174 § 3; 1984 c 130 § 5.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

19.80.045 Rules—Fees. The department must adopt rules as necessary to administer this chapter. The rules may include but are not limited to specifying forms and setting fees for trade name registrations, amendments, searches, renewals, and copies of registration documents. Fees may not exceed the actual cost of administering this chapter. [2011 c 298 § 16; 1984 c 130 § 6.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

19.80.075 Collection and deposit of fees. All fees collected by the department under this chapter must be deposited with the state treasurer and credited to the master license fund. [2011 c 298 § 17; 1992 c 107 § 6; 1984 c 130 § 9.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

19.80.900 Severability—1984 c 130. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [2011 c 298 § 18; 1984 c 130 § 11.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

Chapter 19.83 RCW

TRADING STAMP LICENSES

Sections

- 19.83.020 Issuance of license—Fee.
19.83.040 Coupons or similar devices—Exemptions.

19.83.020 Issuance of license—Fee. In order to obtain such license the person applying therefor shall pay to the county treasurer of the county for which the license is sought the sum of six thousand dollars, and upon such payment

being made to the county treasurer he or she shall issue his or her receipt therefor which shall be presented to the auditor of the county, who shall upon the presentation thereof issue to the person making such payment a license to furnish or sell, or a license to use, for one year, trading stamps, coupons, tickets, certificates, cards, or other similar devices. Such license shall contain the name of the licensee, the date of its issue, the date of its expiration, the city or town in which and the location at which the same shall be used, and the license shall be used at no place other than that mentioned therein. [2011 c 336 § 553; 1913 c 134 § 2; RRS § 8360. Formerly RCW 36.91.020.]

19.83.040 Coupons or similar devices—Exemptions.

(1) Nothing in this chapter, or in any other statute or ordinance of this state, shall apply to:

(a) The issuance and direct redemption by a manufacturer of a premium coupon, certificate, or similar device; or prevent him or her from issuing and directly redeeming such premium coupon, certificate, or similar device, which, however, shall not be issued, circulated, or distributed by retail vendors except when contained in or attached to an original package;

(b) The publication by, or distribution through, newspapers or other publications of coupons, certificates, or similar devices; or

(c) A coupon, certificate, or similar device which is within, attached to, or a part of a package or container as packaged by the original manufacturer and which is to be redeemed by another manufacturer, if:

(i) The coupon, certificate, or similar device clearly states the names and addresses of both the issuing manufacturer and the redeeming manufacturer; and

(ii) The issuing manufacturer is responsible for redemption of the coupon, certificate, or similar device if the redeeming manufacturer fails to do so.

(2) The term "manufacturer," as used in this section, means any vendor of an article of merchandise which is put up by or for him or her in an original package and which is sold under his, her, or its trade name, brand, or mark. [2011 c 336 § 554; 1983 c 40 § 1; 1972 ex.s. c 104 § 1; 1957 c 221 § 3. Prior: 1939 c 31 § 1, part; 1913 c 134 § 3, part; RRS § 8361, part. Formerly RCW 36.91.040.]

Additional notes found at www.leg.wa.gov

Chapter 19.84 RCW

TRADING STAMPS AND PREMIUMS

Sections

- 19.84.030 Distributor liable.

19.84.030 Distributor liable. Any person engaged in any trade, business, or profession who shall distribute, deliver, or present to any person dealing with him or her, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the person issuing or selling the same, as set forth in RCW 19.84.020, or indirectly through

any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same, as set forth in RCW 19.84.020, be liable to the holder thereof for the face value thereof, and shall upon presentation redeem the same, either in goods, wares, or merchandise, or in cash, good and lawful money of the United States of America, at the option of the holder thereof, and in such case any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons, or other similar devices, shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [2011 c 336 § 555; 1907 c 253 § 3; RRS § 5839.]

Chapter 19.85 RCW REGULATORY FAIRNESS ACT

Sections

19.85.030	Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.
19.85.070	Small business economic impact statement—Notice of proposed rule.

19.85.030 Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.

(1)(a) In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320. However, if the agency has completed the pilot rule process as defined by RCW 34.05.313 before filing the notice of a proposed rule, the agency is not required to prepare a small business economic impact statement.

(b) An agency must prepare the small business economic impact statement in accordance with RCW 19.85.040, and file it with the code reviser along with the notice required under RCW 34.05.320. An agency shall file a statement prepared at the request of the joint administrative rules review committee with the code reviser upon its completion before the adoption of the rule. An agency must provide a copy of the small business economic impact statement to any person requesting it.

(2) Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;

- (d) Delaying compliance timetables;
 - (e) Reducing or modifying fine schedules for noncompliance; or
 - (f) Any other mitigation techniques including those suggested by small businesses or small business advocates.
- (3) If the agency determines it cannot reduce the costs imposed by the rule on small businesses, the agency must provide a clear explanation of why it has made that determination and include that statement with its filing of the proposed rule pursuant to RCW 34.05.320.

(4)(a) All small business economic impact statements are subject to selective review by the joint administrative rules review committee pursuant to RCW 34.05.630.

(b) Any person affected by a proposed rule where there is a small business economic impact statement may petition the joint administrative rules review committee for review pursuant to the procedure in RCW 34.05.655. [2011 c 249 § 2; 2007 c 239 § 3; 2000 c 171 § 60; 1995 c 403 § 402; 1994 c 249 § 11. Prior: 1989 c 374 § 2; 1989 c 175 § 72; 1982 c 6 § 3.]

Findings—2007 c 239: See note following RCW 19.85.020.

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

Publication of small business economic impact statement in Washington State Register: RCW 34.08.020.

Additional notes found at www.leg.wa.gov

19.85.070 Small business economic impact statement—Notice of proposed rule. When any rule is proposed for which a small business economic impact statement is required, the adopting agency must provide notice to small businesses of the proposed rule through:

- (1) Direct notification of known interested small businesses or trade organizations affected by the proposed rule;
- (2) Providing information of the proposed rule making to publications likely to be obtained by small businesses of the types affected by the proposed rule; and
- (3) Posting on the agency web site. [2011 c 249 § 3; 1992 c 197 § 1.]

Chapter 19.86 RCW UNFAIR BUSINESS PRACTICES— CONSUMER PROTECTION

Sections

19.86.100	Assurance of discontinuance of prohibited act—Approval of court—Not considered admission.
19.86.110	Demand to produce documentary materials for inspection, answer written interrogatories, or give oral testimony—Contents—Service—Unauthorized disclosure—Return—Modification, vacation—Use—Penalty.

19.86.100 Assurance of discontinuance of prohibited act—Approval of court—Not considered admission. In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose; however, proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter. [2011 c 336 § 556; 1970 ex.s. c 26 § 3; 1961 c 216 § 10.]

19.86.110 Demand to produce documentary materials for inspection, answer written interrogatories, or give oral testimony—Contents—Service—Unauthorized disclosure—Return—Modification, vacation—Use—Penalty. (1) Whenever the attorney general believes that any person (a) may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate, which he or she believes to be relevant to the subject matter of an investigation of a possible violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or federal statutes dealing with the same or similar matters that the attorney general is authorized to enforce, or (b) may have knowledge of any information which the attorney general believes relevant to the subject matter of such an investigation, he or she may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of such demands pertaining to such documentary material or information: PROVIDED, That this section shall not be applicable to criminal prosecutions.

(2) Each such demand shall:

(a) State the statute and section or sections thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) If the demand is for the production of documentary material, describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a request for deposition upon oral examination issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer or managing agent of the person to be served; or

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if said person has no place of business in this state, to his or her principal office or place of business.

(5)(a) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general;

(b) Written interrogatories in a demand served under this section shall be answered in the same manner as provided in the civil rules for superior court;

(c) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude from the place where the examination is held all persons other than the person being examined, the person's counsel, and the officer before whom the testimony is to be taken;

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel;

(e) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the county within which the person resides, is found, or transacts business, or in such other place as may be agreed upon between the person served and the attorney general.

(6) If, after prior court approval, a civil investigative demand specifically prohibits disclosure of the existence or content of the demand, unless otherwise ordered by a superior court for good cause shown, it shall be a misdemeanor for any person if not a bank, trust company, mutual savings bank, credit union, or savings and loan association organized under the laws of the United States or of any one of the United States to disclose to any other person the existence or content of the demand, except for disclosure to counsel for the recipient of the demand or unless otherwise required by law.

(7) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the attorney general, without the consent of the person who produced such material, answered written interrogatories, or gave oral testimony, except as otherwise provided in this section: PROVIDED, That:

(a) Under such reasonable terms and conditions as the attorney general shall prescribe, the copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony shall be available for inspection and

copying by the person who produced such material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of such person;

(b) The attorney general may provide copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony to an official of this state, the federal government, or other state, who is charged with the enforcement of federal or state antitrust or consumer protection laws, if before the disclosure the receiving official agrees in writing that the information may not be disclosed to anyone other than that official or the official's authorized employees. The material provided under this subsection (7)(b) is subject to the confidentiality restrictions set forth in this section and may not be introduced as evidence in a criminal prosecution; and

(c) The attorney general or any assistant attorney general may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as he or she determines necessary in the enforcement of this chapter, including presentation before any court: PROVIDED, That any such material, answers to written interrogatories, or transcripts of oral testimony which contain trade secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material, answers to written interrogatories, or oral testimony.

(8) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the superior court for Thurston county, or in such other county where the parties reside. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court shall have jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(9) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon him or her under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file, in the trial court of general jurisdiction of the county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such person maintains his or her principal place of business, or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the trial court of general jurisdiction of any county under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect the provisions of this section, and may impose such sanctions as are provided for in the civil

rules for superior court with respect to discovery motions. [2011 c 336 § 557; 1993 c 125 § 1; 1990 c 199 § 1; 1987 c 152 § 1; 1982 c 137 § 1; 1970 ex.s. c 26 § 4; 1961 c 216 § 11.]

Rules of court: See *Superior Court Civil Rules*.

Chapter 19.94 RCW WEIGHTS AND MEASURES

Sections

- 19.94.015 Commercial use of instrument or device—Registration—Fees (as amended by 2011 c 103).
19.94.015 Commercial use of instrument or device—Registration—Fees (as amended by 2011 c 298).

19.94.015 Commercial use of instrument or device—Registration—Fees (as amended by 2011 c 103). (1) Except as provided in subsection (4) of this section for the initial registration of an instrument or device, no weighing or measuring instrument or device may be used for commercial purposes in the state unless its commercial use is registered annually. If its commercial use is within a city that has a city sealer and a weights and measures program as provided by RCW 19.94.280, the commercial use of the instrument or device shall be registered with the city if the city has adopted fees pursuant to subsection (2) of this section. If its commercial use is outside of such a city, the commercial use of the instrument or device shall be registered with the department.

(2) A city with such a sealer and program may establish an annual fee for registering the commercial use of such a weighing or measuring instrument or device with the city. The annual fee shall not exceed the fee established in RCW 19.94.175 for registering the use of a similar instrument or device with the department. Fees upon weighing or measuring instruments or devices within the jurisdiction of the city that are collected under this subsection by city sealers shall be deposited into the general fund, or other account, of the city as directed by the governing body of the city.

(3) Registrations with the department are accomplished as part of the master license system under chapter 19.02 RCW. Payment of the registration fee for a weighing or measuring instrument or device under the master license system constitutes the registration required by this section.

(4) The fees established by or under RCW 19.94.175 for registering a weighing or measuring instrument or device shall be paid to the department of licensing concurrently with an application for a master license or with the annual renewal of a master license under chapter 19.02 RCW. A weighing or measuring instrument or device shall be initially registered with the state at the time the owner applies for a master license for a new business or at the first renewal of the license that occurs after the instrument or device is first placed into commercial use. ~~((However, the use of an instrument or device that is in commercial use on the effective date of this act shall be initially registered at the time the first renewal of the master license of the owner of the instrument or device is due following the effective date of this act.))~~ The department of licensing shall remit to the department of agriculture all fees collected under this provision less reasonable collection expenses.

(5) Each city charging registration fees under this section shall notify the department of agriculture at the time such fees are adopted and whenever changes in the fees are adopted. [2011 c 103 § 38; 1995 c 355 § 1.]

Purpose—2011 c 103: See note following RCW 15.26.120.

19.94.015 Commercial use of instrument or device—Registration—Fees (as amended by 2011 c 298). (1) Except as provided in subsection (4) of this section for the initial registration of an instrument or device, no weighing or measuring instrument or device may be used for commercial purposes in the state unless its commercial use is registered annually. If its commercial use is within a city that has a city sealer and a weights and measures program as provided by RCW 19.94.280, the commercial use of the instrument or device ~~((shall))~~ **must** be registered with the city if the city has adopted fees pursuant to subsection (2) of this section. If its commercial use is outside of such a city, the commercial use of the instrument or device ~~((shall))~~ **must** be registered with the department.

(2) A city with such a sealer and program may establish an annual fee for registering the commercial use of such a weighing or measuring instrument or device with the city. The annual fee ~~((shall))~~ **may** not exceed the fee established in RCW 19.94.175 for registering the use of a similar instrument or device with the department. Fees upon weighing or measuring instruments or devices within the jurisdiction of the city that are collected under

this subsection by city sealers ~~((shall))~~ **must** be deposited into the general fund, or other account, of the city as directed by the governing body of the city.

(3) Registrations with the department are accomplished as part of the master license system under chapter 19.02 RCW. Payment of the registration fee for a weighing or measuring instrument or device under the master license system constitutes the registration required by this section.

(4) The fees established by or under RCW 19.94.175 for registering a weighing or measuring instrument or device ~~((shall))~~ **must** be paid to the department of ~~((licensing))~~ **revenue** concurrently with an application for a master license or with the annual renewal of a master license under chapter 19.02 RCW. A weighing or measuring instrument or device ~~((shall))~~ **must** be initially registered with the state at the time the owner applies for a master license for a new business or at the first renewal of the license that occurs after the instrument or device is first placed into commercial use. However, the use of an instrument or device that is in commercial use on *the effective date of this act ~~((shall))~~ **must** be initially registered at the time the first renewal of the master license of the owner of the instrument or device is due following *the effective date of this act. The department of ~~((licensing shall))~~ **revenue must** remit to the department of agriculture all fees collected under this provision less reasonable collection expenses.

(5) Each city charging registration fees under this section ~~((shall))~~ **must** notify the department of agriculture at the time such fees are adopted and whenever changes in the fees are adopted. [2011 c 298 § 19; 1995 c 355 § 1.]

Reviser's note: *(1) 1995 c 355 has different effective dates. The effective date for sections 1 and 7 is January 1, 1996, and the effective date for sections 2 through 6 and 8 through 25 is July 1, 1995.

(2) RCW 19.94.015 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Additional notes found at www.leg.wa.gov

Chapter 19.100 RCW

FRANCHISE INVESTMENT PROTECTION

Sections

19.100.050	Escrow or impoundment of franchise fees as registration condition—Rules or orders—Procedure to rescind.
19.100.120	Registration statement—Stop order—Grounds.
19.100.130	Registration statement—Stop order—Notice—Hearing—Modification or vacation of order.
19.100.160	Application of chapter—Jurisdiction—Service of process—Consent.
19.100.180	Relation between franchisor and franchisee—Rights and prohibitions.
19.100.190	Unfair or deceptive acts—Suits for damages—Violations of other acts, use in evidence.
19.100.230	Referral of evidence to attorney general or prosecuting attorney.
19.100.243	Subpoena authority—Application—Contents—Notice—Fees.
19.100.250	Powers of director as to rules, forms, orders and defining terms—Interpretive opinions.

19.100.050 Escrow or impoundment of franchise fees as registration condition—Rules or orders—Procedure to rescind. The director may by rule or order require as a condition to the effectiveness of the registration the escrow or impound of franchise fees if he or she finds that such requirement is necessary and appropriate to protect prospective franchisees. At any time after the issuance of such rule or order under this section the franchisor may in writing request the rule or order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fifteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the administrative procedure act, chapter 34.05

RCW, the director shall determine whether to affirm and to continue or to rescind such order and the director shall have all powers granted under such act. [2011 c 336 § 558; 1972 ex.s. c 116 § 4; 1971 ex.s. c 252 § 5.]

19.100.120 Registration statement—Stop order—Grounds. The director may issue a stop order denying effectiveness to or suspending or revoking the effectiveness of any registration statement if he or she finds that the order is in the public interest and that:

(1) The registration statement as of its effective date, or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was in the light of the circumstances under which it was made false or misleading with respect to any material fact;

(2) Any provision of this chapter or any rule or order or condition lawfully imposed under this chapter has been violated in connection with the offering by:

(a) The person filing the registration statement but only if such person is directly or indirectly controlled by or acting for the franchisor; or

(b) The franchisor, any partner, officer, or director of a franchisor, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling or controlled by the franchisor.

(3) The franchise offering registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering but the director may not:

(a) Institute a proceeding against an effective registration statement under this clause more than one year from the date of the injunctive relief thereon unless the injunction is thereafter violated; and

(b) Enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction is based on facts that currently constitute a ground for stop order under this section;

(4) A franchisor's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) The applicant has failed to comply with any rule or order of the director issued pursuant to RCW 19.100.050.

(7) The applicant or registrant has failed to pay the proper registration fee but the director may enter only a denial order under this subsection and he or she shall vacate such order when the deficiency has been corrected. [2011 c 336 § 559; 1972 ex.s. c 116 § 8; 1971 ex.s. c 252 § 12.]

19.100.130 Registration statement—Stop order—Notice—Hearing—Modification or vacation of order. Upon the entry of a stop order under any part of RCW 19.100.120, the director shall promptly notify the applicant that the order has been entered and that the reasons therefor and that within fifteen days after receipt of a written request, the matter will be set down for hearing. If no hearing is requested within fifteen days and none is ordered by the

director, the director shall enter his or her written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director after notice of an opportunity for hearings to the issuer and to the applicant or registrant shall enter his or her written findings of fact and conclusions of law and may modify or vacate the order. The director may modify or vacate a stop order if he or she finds that the conditions which prompted his or her entry have changed or that it is otherwise in the public interest to do so. [2011 c 336 § 560; 1971 ex.s. c 252 § 13.]

19.100.160 Application of chapter—Jurisdiction—Service of process—Consent. Any person who is engaged or hereafter engaged directly or indirectly in the sale or offer to sell a franchise or a subfranchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to the provisions of this chapter, shall be amenable to the jurisdiction of the courts of this state and shall be amenable to the service of process under RCW 4.28.180, 4.28.185, and 19.86.160. Every applicant for registration of a franchise under this law (by other than a Washington corporation) shall file with the director in such form as he or she by rule prescribed, an irrevocable consent appointing the director or his or her successor in office to be his or her attorney, to receive service or any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her successors, executor, or administrator which arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing consent. A person who has filed such a consent in connection with a previous registration under this law need not file another. Service may be made by leaving a copy of the process in the office of the director but it is not as effective unless:

(1) The plaintiff, who may be the director, in a suit, action, or proceeding instituted by him or her forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his or her last address on file with the director; and

(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further times the court allows. [2011 c 336 § 561; 1991 c 226 § 9; 1971 ex.s. c 252 § 16.]

19.100.180 Relation between franchisor and franchisee—Rights and prohibitions. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and the franchisees:

(1) The parties shall deal with each other in good faith.

(2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to:

(a) Restrict or inhibit the right of the franchisees to join an association of franchisees.

(b) Require a franchisee to purchase or lease goods or services of the franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the bur-

den of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(c) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is: (i) Reasonable, (ii) based on franchises granted at materially different times and such discrimination is reasonably related to such difference in time, or is based on other proper and justifiable distinctions considering the purposes of this chapter, and (iii) is not arbitrary. However, nothing in (c) of this subsection precludes negotiation of the terms and conditions of a franchise at the initiative of the franchisees.

(d) Sell, rent, or offer to sell to a franchisee any product or service for more than a fair and reasonable price.

(e) Obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless such benefit is disclosed to the franchisee.

(f) If the franchise provides that the franchisee has an exclusive territory, which exclusive territory shall be specified in the franchise agreement, for the franchisor or subfranchisor to compete with the franchisee in an exclusive territory or to grant competitive franchisees in the exclusive territory area previously granted to another franchisee.

(g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter, except as otherwise permitted by RCW 19.100.220.

(h) Impose on a franchisee by contract, rule, or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving such to be reasonable and necessary.

(i) Refuse to renew a franchise without fairly compensating the franchisee for the fair market value, at the time of expiration of the franchise, of the franchisee's inventory, supplies, equipment, and furnishings purchased from the franchisor, and good will, exclusive of personalized materials which have no value to the franchisor, and inventory, supplies, equipment, and furnishings not reasonably required in the conduct of the franchise business: PROVIDED, That compensation need not be made to a franchisee for good will if (i) the franchisee has been given one year's notice of non-renewal and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor: PROVIDED FURTHER, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

(j) Terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, with-

out limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee and to cure such default after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure such default, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default: PROVIDED, That after three willful and material breaches of the same term of the franchise agreement occurring within a twelve-month period, for which the franchisee has been given notice and an opportunity to cure as provided in this subsection, the franchisor may terminate the agreement upon any subsequent willful and material breach of the same term within the twelve-month period without providing notice or opportunity to cure: PROVIDED FURTHER, That a franchisor may terminate a franchise without giving prior notice or opportunity to cure a default if the franchisee: (i) Is adjudicated a bankrupt or insolvent; (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of the franchise business; (iii) voluntarily abandons the franchise business; or (iv) is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchise business. Upon termination for good cause, the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee's inventory and supplies, exclusive of (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchise business; and (iii), if the franchisee is to retain control of the premises of the franchise business, any inventory and supplies not purchased from the franchisor or on his or her express requirement: PROVIDED, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor. [2011 c 336 § 562; 1991 c 226 § 11; 1980 c 63 § 1; 1973 1st ex.s. c 33 § 4; 1972 ex.s. c 116 § 10; 1971 ex.s. c 252 § 18.]

19.100.190 Unfair or deceptive acts—Suits for damages—Violations of other acts, use in evidence. (1) The commission of any unfair or deceptive acts or practices or unfair methods of competition prohibited by RCW 19.100.180 as now or hereafter amended shall constitute an unfair or deceptive act or practice under the provisions of chapter 19.86 RCW.

(2) Any person who sells or offers to sell a franchise in violation of this chapter shall be liable to the franchisee or subfranchisor who may sue at law or in equity for damages caused thereby for rescission or other relief as the court may deem appropriate. In the case of a violation of RCW 19.100.170 rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know or if he or she had exercised reasonable care would not have known of the untruth or omission.

(3) The suit authorized under subsection (2) of this section may be brought to recover the actual damages sustained by the plaintiff and the court may in its discretion increase the award of damages to an amount not to exceed three times the

actual damages sustained: PROVIDED, That the prevailing party may in the discretion of the court recover the costs of said action including a reasonable attorneys' fee.

(4) Any person who becomes liable to make payments under this section may recover contributions as in cases of contracts from any persons who, if sued separately, would have been liable to make the same payment.

(5) A final judgment, order, or decree heretofore or hereafter rendered against a person in any civil, criminal, or administrative proceedings under the United States anti-trust laws, under the federal trade commission act, under the Washington state consumer protection act, or this chapter shall be regarded as evidence against such persons in any action brought by any party against such person under subsections (1) and (2) of this section as to all matters which said judgment or decree would be an estoppel between the parties thereto. [2011 c 336 § 563; 1972 ex.s. c 116 § 11; 1971 ex.s. c 252 § 19.]

19.100.230 Referral of evidence to attorney general or prosecuting attorney. The director may refer such evidence as may be available concerning violations of this chapter or any rule or order hereunder to the attorney general or the proper prosecuting attorney who may in his or her discretion with or without such a reference institute the appropriate criminal proceeding under this chapter. [2011 c 336 § 564; 1971 ex.s. c 252 § 23.]

19.100.243 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 3.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

19.100.250 Powers of director as to rules, forms, orders and defining terms—Interpretive opinions. The director may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter including rules and forms governing applications and reports and defining any terms whether or not used in this chapter insofar as the definitions are consistent with this chapter. The director in his or her discretion may honor requests from interested persons for interpretive opinions. [2011 c 336 § 565; 1972 ex.s. c 116 § 15; 1971 ex.s. c 252 § 25.]

Chapter 19.105 RCW CAMPING RESORTS

Sections

- 19.105.490 Violations—Referral to attorney general or prosecuting attorney.
19.105.570 Military training or experience.

19.105.490 Violations—Referral to attorney general or prosecuting attorney. The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order under this chapter to the attorney general or the proper prosecuting attorney who may in his or her discretion, with or without such a reference, institute the appropriate civil or criminal proceedings under this chapter. [2011 c 336 § 566; 1982 c 69 § 20.]

19.105.570 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 17.]

Chapter 19.110 RCW BUSINESS OPPORTUNITY FRAUD ACT

Sections

- 19.110.143 Subpoena authority—Application—Contents—Notice—Fees.

19.110.143 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

[2011 RCW Supp—page 380]

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 4.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

Chapter 19.112 RCW MOTOR FUEL QUALITY ACT

Sections

- 19.112.060 Penalties.

19.112.060 Penalties. (1)(a) Any person who knowingly violates any provision of this chapter or rules adopted under it is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars or imprisonment for up to three hundred sixty-four days, or both.

(b) The director shall assess a civil penalty ranging from one hundred dollars to ten thousand dollars per occurrence, giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation, and the history of previous violations. Civil penalties collected under this chapter shall be deposited into the motor vehicle fund.

(2) The penalties in subsection (1)(a) of this section do not apply to violations of RCW 19.112.110 and 19.112.120. [2011 c 96 § 20; 2006 c 338 § 6; 1990 c 102 § 7.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

Chapter 19.116 RCW MOTOR VEHICLE SUBLEASING OR TRANSFER

Sections

- 19.116.020 Definitions.

19.116.020 Definitions. The definitions set forth in this section apply throughout this chapter, unless the context requires otherwise:

- (1) "Debtor" has the meaning set forth in RCW 62A.9A-102.
- (2) "Motor vehicle" means a vehicle required to be registered under chapter 46.16A RCW.
- (3) "Person" means an individual, company, firm, association, partnership, trust, corporation, or other legal entity.
- (4) "Security agreement" has the meaning set forth in RCW 62A.9A-102.
- (5) "Security interest" has the meaning set forth in RCW 62A.1-201(37).
- (6) "Secured party" has the meaning set forth in RCW 62A.9A-102. [2011 c 171 § 5; 1990 c 44 § 3.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Chapter 19.118 RCW

MOTOR VEHICLE WARRANTIES

Sections

19.118.170 History of vehicle—Availability to owner.

19.118.170 History of vehicle—Availability to owner. Notwithstanding RCW 46.12.635, the department of licensing shall make available to the registered owner all title history information regarding the vehicle upon request of the registered owner and receipt of a statement that he or she is investigating or pursuing rights under this chapter. [2011 c 171 § 6; 1995 c 254 § 9.]

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Additional notes found at www.leg.wa.gov

Chapter 19.120 RCW

GASOLINE DEALER BILL OF RIGHTS ACT

Sections

19.120.090 Action for damages, rescission, or other relief.

19.120.090 Action for damages, rescission, or other relief. (1) Any person who sells or offers to sell a motor fuel franchise in violation of this chapter shall be liable to the motor fuel retailer or motor fuel refiner-supplier who may sue at law or in equity for damages caused thereby for rescission or other relief as the court may deem appropriate. In the case of a violation of RCW 19.120.070 rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know or if he or she had exercised reasonable care would not have known of the untruth or omission.

(2) The suit authorized under subsection (1) of this section may be brought to recover the actual damages sustained by the plaintiff: PROVIDED, That the prevailing party may in the discretion of the court recover the costs of said action including a reasonable attorneys' fee.

(3) Any person who becomes liable to make payments under this section may recover contributions as in cases of contracts from any persons who, if sued separately, would have been liable to make the same payment.

(4) A final judgment, order, or decree heretofore or hereafter rendered against a person in any civil, criminal, or administrative proceedings under the United States anti-trust laws, under the federal trade commission act, or this chapter shall be regarded as evidence against such persons in any action brought by any party against such person under subsection (1) of this section as to all matters which said judgment or decree would be an estoppel between the parties thereto. [2011 c 336 § 567; 1986 c 320 § 10.]

Chapter 19.122 RCW

UNDERGROUND UTILITIES

Sections

- 19.122.010 Intent. *(Effective January 1, 2013.)*
- 19.122.020 Definitions. *(Effective January 1, 2013.)*
- 19.122.027 One-number locator services—Single statewide toll-free telephone number. *(Effective January 1, 2013.)*
- 19.122.030 Excavator and facility operator duties before excavation. *(Effective January 1, 2013.)*
- 19.122.031 Exempted activities. *(Effective January 1, 2013.)*
- 19.122.033 Notice of excavation to pipeline companies. *(Effective January 1, 2013.)*
- 19.122.035 Pipeline company duties after notice of excavation—Examination—Information of damage—Notification of local first responders. *(Effective January 1, 2013.)*
- 19.122.040 Underground facilities identified in bid or contract—Excavator's duty of reasonable care—Liability for damages—Attorneys' fees. *(Effective January 1, 2013.)*
- 19.122.050 Damage to underground facility—Notification by excavator—Repairs or relocation of facility. *(Effective January 1, 2013.)*
- 19.122.053 Report of damage to underground facility. *(Effective January 1, 2013.)*
- 19.122.055 Failure to notify one-number locator service—Civil penalty, if damages. *(Effective January 1, 2013.)*
- 19.122.060 Repealed. *(Effective January 1, 2013.)*
- 19.122.070 Civil penalties—Treble damages—Existing remedies not affected. *(Effective January 1, 2013.)*
- 19.122.075 Damage or removal of permanent marking—Civil penalty. *(Effective January 1, 2013.)*
- 19.122.080 Waiver of notification and marking requirements. *(Effective January 1, 2013.)*
- 19.122.100 Violation of RCW 19.122.090—Affirmative defense. *(Effective January 1, 2013.)*
- 19.122.110 False excavation confirmation code—Penalty. *(Effective January 1, 2013.)*
- 19.122.130 Commission to contract with nonprofit entity—Safety committee—Review of violations of chapter. *(Effective January 1, 2013, until December 31, 2020.)*
- 19.122.140 Commission authority—Receipt of notification of violation of chapter—Referral to attorney general. *(Effective January 1, 2013, until December 31, 2020.)*
- 19.122.150 Commission authority—Violations of chapter—Imposition of penalties. *(Effective January 1, 2013, until December 31, 2020.)*
- 19.122.160 Damage prevention account. *(Effective January 1, 2013.)*
- 19.122.170 Damage prevention account—Use of funds. *(Effective January 1, 2013.)*
- 19.122.180 Damage prevention account—Deposit of penalties. *(Effective January 1, 2013.)*
- 19.122.901 Short title—2011 c 263. *(Effective January 1, 2013.)*

19.122.010 Intent. *(Effective January 1, 2013.)* In this chapter, the underground utility damage prevention act, the legislature intends to protect public health and safety and prevent disruption of vital utility services through a comprehensive damage prevention program that includes:

(1) Assigning responsibility for providing notice of proposed excavation, locating and marking underground utilities, and reporting and repairing damage;

(2) Setting safeguards for construction and excavation near hazardous liquid and gas pipelines;

(3) Improving worker and public knowledge of safe practices;

(4) Collecting and analyzing damage data;

(5) Reviewing alleged violations; and

(6) Enforcing this chapter. [2011 c 263 § 1; 1984 c 144 § 1.]

Report—2011 c 263: "By December 1, 2015, the utilities and transportation commission must report to the appropriate committees of the legislature on the effectiveness of the damage prevention program established under chapter 19.122 RCW. The legislative report required under this section must include analysis of damage data reported under section 20 of this act." [2011 c 263 § 26.]

Effective date—2011 c 263: "This act takes effect January 1, 2013."
[2011 c 263 § 27.]

19.122.020 Definitions. (Effective January 1, 2013.)

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

(1) "Bar hole" means a hole made in the soil or pavement with a hand-operated bar for the specific purpose of testing the subsurface atmosphere with a combustible gas indicator.

(2) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(3) "Commission" means the utilities and transportation commission.

(4) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected facility operator determines that repairs are required.

(5) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(6) "End user" means any utility customer or consumer of utility services or commodities provided by a facility operator.

(7) "Equipment operator" means an individual conducting an excavation.

(8) "Excavation" and "excavate" means any operation, including the installation of signs, in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means.

(9) "Excavation confirmation code" means a code or ticket issued by a one-number locator service for the site where an excavation is planned. The code must be accompanied by the date and time it was issued.

(10) "Excavator" means any person who engages directly in excavation.

(11) "Facility operator" means any person who owns an underground facility or is in the business of supplying any utility service or commodity for compensation. "Facility operator" does not include a utility customer who owns a service lateral that terminates at a facility operator's main utility line.

(12) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(13) "Hazardous liquid" means:

(a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998;

(b) Carbon dioxide; and

(c) Other substances designated as hazardous by the secretary of transportation and incorporated by reference by the commission by rule.

(14) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

(15) "Large project" means a project that exceeds seven hundred linear feet.

(16) "Locatable underground facility" means an underground facility which can be marked with reasonable accuracy.

(17) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(18) "Notice" or "notify" means contact in person or by telephone or other electronic method, and, with respect to contact of a one-number locator service, also results in the receipt of a valid excavation confirmation code.

(19) "One-number locator service" means a service through which a person can notify facility operators and request marking of underground facilities.

(20) "Person" means an individual, partnership, franchise holder, association, corporation, the state, a city, a county, a town, or any subdivision or instrumentality of the state, including any unit of local government, and its employees, agents, or legal representatives.

(21) "Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping or compressor units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Pipeline" or "pipeline system" does not include process or transfer pipelines.

(22) "Pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or gas. "Pipeline company" does not include:

(a) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or

(b) Excavation contractors or other contractors that contract with a pipeline company.

(23) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility.

(24) "Service lateral" means an underground water, storm water, or sewer facility located in a public right-of-way or utility easement that connects an end user's building or property to a facility operator's underground facility, and terminates beyond the public right-of-way or utility easement.

(25) "Transfer pipeline" means a buried or aboveground pipeline used to carry hazardous liquid between a tank vessel or transmission pipeline and the first valve inside secondary containment at a facility, provided that any discharge on the facility side of the first valve will not directly impact waters of the state. "Transfer pipeline" includes valves and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. "Transfer pipeline" does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, or tank vessel or storage tanks.

(26) "Transmission pipeline" means a pipeline that transports hazardous liquid or gas within a storage field, or transports hazardous liquid or gas from an interstate pipeline or

storage facility to a distribution main or a large volume hazardous liquid or gas user, or operates at a hoop stress of twenty percent or more of the specified minimum yield strength.

(27) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors that are below ground. This definition does not include pipelines as defined in subsection (21) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail.

(28) "Unlocatable underground facility" means, subject to the provisions of RCW 19.122.030, an underground facility that cannot be marked with reasonable accuracy using available information to designate the location of an underground facility. "Unlocatable underground facility" includes, but is not limited to, service laterals, storm drains, and non-conductive and nonmetallic underground facilities that do not contain trace wires.

(29) "Utility easement" means a right held by a facility operator to install, maintain, and access an underground facility or pipeline. [2011 c 263 § 2; 2007 c 142 § 9; 2005 c 448 § 1; 2000 c 191 § 15; 1984 c 144 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

19.122.027 One-number locator services—Single statewide toll-free telephone number. (Effective January 1, 2013.) (1) The commission must establish a single statewide toll-free telephone number to be used for referring excavators to the appropriate one-number locator service.

(2) The commission, in consultation with the Washington utilities coordinating council, must establish minimum standards and best management practices for one-number locator services.

(3) One-number locator services must be operated by nongovernmental agencies.

(4) All facility operators within a one-number locator service area must subscribe to the service.

(5) Failure to subscribe to a one-number locator service constitutes willful intent to avoid compliance with this chapter. [2011 c 263 § 3; 2005 c 448 § 2; 2000 c 191 § 16.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

19.122.030 Excavator and facility operator duties before excavation. (Effective January 1, 2013.) (1)(a) Unless exempted under RCW 19.122.031, before commencing any excavation, an excavator must mark the boundary of

the excavation area with white paint applied on the ground of the worksite, then provide notice of the scheduled commencement of excavation to all facility operators through a one-number locator service.

(b) If boundary marking required by (a) of this subsection is infeasible, an excavator must communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified.

(2) An excavator must provide the notice required by subsection (1) of this section to a one-number locator service not less than two business days and not more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the excavator and facility operators. If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work.

(3) Upon receipt of the notice provided for in subsection (1) of this section, a facility operator must, with respect to:

(a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information by marking their location;

(b) The facility operator's unlocatable or identified but unlocatable underground facilities, provide the excavator with available information as to their location; and

(c) Service laterals, designate their presence or location, if the service laterals:

(i) Connect end users to the facility operator's main utility line; and

(ii) Are within a public right-of-way or utility easement and the boundary of the excavation area identified under subsection (1) of this section.

(4)(a) A facility operator must provide information to an excavator pursuant to subsection (3) of this section no later than two business days after the receipt of the notice provided for in subsection (1) of this section or before excavation commences, at the option of the facility operator, unless otherwise agreed by the parties.

(b) A facility operator complying with subsection (3)(b) and (c) of this section may do so in a manner that includes any of the following methods:

(i) Placing within a proposed excavation area a triangular mark at the main utility line pointing at the building, structure, or property in question, indicating the presence of an unlocatable or identified but unlocatable underground facility, including a service lateral;

(ii) Arranging to meet an excavator at a worksite to provide available information about the location of service laterals; or

(iii) Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method.

(c) A facility operator's good faith attempt to comply with subsection (3)(b) and (c) of this section:

(i) Constitutes full compliance with the requirements of this section, and no person may be found liable for damages or injuries that may result from such compliance, apart from liability for arranging for repairs or relocation as provided in RCW 19.122.050(2); and

(ii) Does not constitute any assertion of ownership or operation of a service lateral by the facility operator.

(d) An end user is responsible for determining the location of a service lateral on their property or a service lateral that they own. Nothing in this section may be interpreted to require an end user to subscribe to a one-number locator service or to locate a service lateral within a right-of-way or utility easement.

(5) An excavator must not excavate until all known facility operators have marked or provided information regarding underground facilities as provided in this section.

(6)(a) Once marked by a facility operator, an excavator is responsible for maintaining the accuracy of the facility operator's markings of underground facilities for the lesser of:

(i) Forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section; or

(ii) The duration of the project.

(b) An excavator that makes repeated requests for location of underground facilities due to its failure to maintain the accuracy of a facility operator's markings as required by this subsection (6) may be charged by the facility operator for services provided.

(c) A facility operator's markings of underground utilities expire forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section. For excavation occurring after that date, an excavator must provide additional notice to a one-number locator service pursuant to subsection (1) of this section.

(7) An excavator has the right to receive reasonable compensation from a facility operator for costs incurred by the excavator if the facility operator does not locate its underground facilities in accordance with the requirements specified in this section.

(8) A facility operator has the right to receive reasonable compensation from an excavator for costs incurred by the facility operator if the excavator does not comply with the requirements specified in this section.

(9) A facility operator is not required to comply with subsection (4) of this section with respect to service laterals conveying only water if their presence can be determined from other visible water facilities, such as water meters, water valve covers, and junction boxes in or adjacent to the boundary of an excavation area identified under subsection (1) of this section.

(10) If an excavator discovers underground facilities that are not identified, the excavator must cease excavating in the vicinity of the underground facilities and immediately notify the facility operator or a one-number locator service. If an excavator discovers identified but unlocatable underground facilities, the excavator must notify the facility operator. Upon notification by a one-number locator service or an excavator, a facility operator must allow for location of the uncovered portion of an underground facility identified by the excavator, and may accept location information from the excavator for marking of the underground facility. [2011 c 263 § 4; 2000 c 191 § 17; 1988 c 99 § 1; 1984 c 144 § 3.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

Damages to facilities on state highways: RCW 47.44.150.

19.122.031 Exempted activities. (Effective January 1, 2013.) (1) The requirements specified in RCW 19.122.030 do not apply to any of the following activities:

(a) An emergency excavation, but only with respect to boundary marking and notice requirements specified in RCW 19.122.030 (1) and (2), and provided that the excavator provides notice to a one-number locator service at the earliest practicable opportunity;

(b) An excavation of less than twelve inches in depth on private noncommercial property, if the excavation is performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed;

(c) The tilling of soil for agricultural purposes less than:

(i) Twelve inches in depth within a utility easement; and

(ii) Twenty inches in depth outside of a utility easement;

(d) The replacement of an official traffic sign installed prior to January 1, 2013, no deeper than the depth at which it was installed;

(e) Road maintenance activities involving excavation less than six inches in depth below the original road grade and ditch maintenance activities involving excavation less than six inches in depth below the original ditch flowline, or alteration of the original ditch horizontal alignment;

(f) The creation of bar holes less than twelve inches in depth, or of any depth during emergency leak investigations, provided that the excavator takes reasonable measures to eliminate electrical arc hazards; or

(g) Construction, operation, or maintenance activities by an irrigation district on rights-of-way, easements, or facilities owned by the federal bureau of reclamation in federal reclamation projects.

(2) Any activity described in subsection (1) of this section is subject to the requirements specified in RCW 19.122.050. [2011 c 263 § 5.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.033 Notice of excavation to pipeline companies. (Effective January 1, 2013.) (1) Before commencing any excavation, an excavator must notify pipeline companies of the scheduled commencement of excavation through a one-number locator service in the same manner as required for notifying facility operators of excavation under RCW 19.122.030. Pipeline companies have the same rights and responsibilities as facility operators under RCW 19.122.030 regarding excavation. Excavators have the same rights and responsibilities under this section as they have under RCW 19.122.030.

(2) Project owners, excavators, and pipeline companies have the same rights and responsibilities relating to excavation near pipelines that they have for excavation near underground facilities as provided in RCW 19.122.040.

(3) The state, and any subdivision or instrumentality of the state, including any unit of local government, must, when planning construction or excavation within one hundred feet,

or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline, notify the pipeline company of the scheduled commencement of work.

(4) Any unit of local government that issues permits under codes adopted pursuant to chapter 19.27 RCW must, when permitting construction or excavation within one hundred feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline:

(a) Notify the pipeline company of the permitted activity when it issues the permit; or

(b) Require, as a condition of issuing the permit, that the applicant consult with the pipeline company.

(5) The commission must assist local governments in obtaining hazardous liquid and gas pipeline location information and maps, as provided in RCW 81.88.080. [2011 c 263 § 6; 2000 c 191 § 18.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

19.122.035 Pipeline company duties after notice of excavation—Examination—Information of damage—Notification of local first responders. (Effective January 1, 2013.) (1) After a pipeline company has been notified by an excavator pursuant to RCW 19.122.033 that excavation will uncover any portion of the pipeline company's pipeline, the pipeline company shall ensure that the pipeline section in the vicinity of the excavation is examined for damage prior to being reburied.

(2) Immediately upon receiving information of third-party damage to a hazardous liquid pipeline, the company that operates the pipeline shall terminate the flow of hazardous liquid in that pipeline until it has visually inspected the pipeline. After visual inspection, the pipeline company shall determine whether the damaged pipeline section should be replaced or repaired, or whether it is safe to resume pipeline operation. Immediately upon receiving information of third-party damage to a gas pipeline, the pipeline company shall conduct a visual inspection of the pipeline to determine whether the flow of gas through that pipeline should be terminated, and whether the damaged pipeline should be replaced or repaired. A record of the pipeline company's inspection report and test results shall be provided to the commission, consistent with reporting requirements under 49 C.F.R. Parts 191 and 195, Subpart B.

(3) Pipeline companies shall immediately notify local first responders and the department of ecology of any reportable release of a hazardous liquid from a pipeline. Pipeline companies shall immediately notify local first responders and the commission of any blowing gas leak from a gas pipeline that has ignited or represents a probable hazard to persons or property. Pipeline companies shall take all appropriate steps to ensure the public safety in the event of a release of hazardous liquid or gas under this subsection.

(4) No damaged pipeline may be buried until it is repaired or relocated. The pipeline company shall arrange for repairs or relocation of a damaged pipeline as soon as is prac-

tical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price. [2011 c 263 § 7; 2000 c 191 § 19.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

19.122.040 Underground facilities identified in bid or contract—Excavator's duty of reasonable care—Liability for damages—Attorneys' fees. (Effective January 1, 2013.) (1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation. The following are deemed to be changed or differing site conditions:

(a) An underground facility not identified as required by this chapter or other provision of law; or

(b) An underground facility not located, as required by this chapter or other provision of law, by the project owner, facility operator, or excavator if the project owner or excavator is also a facility operator.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator must:

(a) Determine the precise location of underground facilities which have been marked;

(b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and

(c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

(3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation is liable for any damages. Any clause in an excavation contract which attempts to allocate liability, or requires indemnification to shift the economic consequences of liability, that differs from the provisions of this chapter is against public policy and unenforceable. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.

(4) In any action brought under this section, the prevailing party is entitled to reasonable attorneys' fees. [2011 c 263 § 8; 1984 c 144 § 4.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.050 Damage to underground facility—Notification by excavator—Repairs or relocation of facility. (Effective January 1, 2013.) (1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the facility operator and a one-number locator service, and report the damage as required under RCW 19.122.053. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropri-

ate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) A facility operator notified in accordance with subsection (1) of this section shall arrange for repairs or relocation as soon as is practical, or permit the excavator to do necessary repairs or relocation at a mutually acceptable price. [2011 c 263 § 9; 1984 c 144 § 5.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.053 Report of damage to underground facility. (Effective January 1, 2013.) (1) Facility operators and excavators who observe or cause damage to an underground facility must report the damage event to the commission.

(2) A nonpipeline facility operator conducting an excavation, or a subcontractor conducting an excavation on the facility operator's behalf, that strikes the facility operator's own underground facility is not required to report that damage event to the commission.

(3) Reports must be made to the commission's office of pipeline safety within forty-five days of the damage event, or sooner if required by law, using the commission's virtual private damage information reporting tool (DIRT) report form, or other similar form if it reports:

(a) The name of the person submitting the report and whether the person is an excavator, a representative of a one-number locator service, or a facility operator;

(b) The date and time of the damage event;

(c) The address where the damage event occurred;

(d) The type of right-of-way, where the damage event occurred, including but not limited to city street, state highway, or utility easement;

(e) The type of underground facility damaged, including but not limited to pipes, transmission pipelines, distribution lines, sewers, conduits, cables, valves, lines, wires, manholes, attachments, or parts of poles or anchors below ground;

(f) The type of utility service or commodity the underground facility stores or conveys, including but not limited to electronic, telephonic or telegraphic communications, water, sewage, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances;

(g) The type of excavator involved, including but not limited to contractors or facility operators;

(h) The excavation equipment used, including but not limited to augers, bulldozers, backhoes, or hand tools;

(i) The type of excavation being performed, including but not limited to drainage, grading, or landscaping;

(j) Whether a one-number locator service was notified before excavation commenced, and, if so, the excavation confirmation code provided by a one-number locator service;

(k) If applicable:

(i) The person who located the underground facility, and their employer;

(ii) Whether underground facility marks were visible in the proposed excavation area before excavation commenced;

(iii) Whether underground facilities were marked correctly;

(l) Whether an excavator experienced interruption of work as a result of the damage event;

(m) A description of the damage; and

(n) Whether the damage caused an interruption of underground facility service.

(4) The commission must use reported data to evaluate the effectiveness of the damage prevention program. [2011 c 263 § 20.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.055 Failure to notify one-number locator service—Civil penalty, if damages. (Effective January 1, 2013.) (1)(a) Any excavator who fails to notify a one-number locator service and causes damage to a hazardous liquid or gas underground facility is subject to a civil penalty of not more than ten thousand dollars for each violation.

(b) The civil penalty in this subsection may also be imposed on any excavator who violates RCW 19.122.090.

(2) All civil penalties recovered under this section must be deposited into the damage prevention account created in RCW 19.122.160. [2011 c 263 § 10; 2005 c 448 § 3; 2001 c 238 § 5; 2000 c 191 § 24.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Finding—Effective date—2001 c 238: See notes following RCW 80.24.060.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

19.122.060 Repealed. (Effective January 1, 2013.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

19.122.070 Civil penalties—Treble damages—Existing remedies not affected. (Effective January 1, 2013.) (1) Any person who violates any provision of this chapter not amounting to a violation of RCW 19.122.055 is subject to a civil penalty of not more than one thousand dollars for an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period. All penalties recovered in such actions must be deposited in the damage prevention account created in RCW 19.122.160.

(2) Any excavator who willfully or maliciously damages a marked underground facility is liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known facility operators or a one-number locator service, any damage to the underground facility is deemed willful and malicious and is subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage. [2011 c 263 § 11; 2005 c 448 § 4; 1984 c 144 § 7.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Damages to facilities on state highways: RCW 47.44.150.

19.122.075 Damage or removal of permanent marking—Civil penalty. (Effective January 1, 2013.) Any person who willfully damages or removes a permanent marking

used to identify an underground facility or pipeline, or a temporary marking prior to its intended use, is subject to a civil penalty of not more than one thousand dollars for an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period. [2011 c 263 § 14; 2000 c 191 § 23.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Intent—Findings—Conflict with federal requirements—Short title—Effective date—2000 c 191: See RCW 81.88.005 and 81.88.900 through 81.88.902.

19.122.080 Waiver of notification and marking requirements. (*Effective January 1, 2013.*) The notification and marking provisions of this chapter may be waived for one or more designated persons by a facility operator with respect to all or part of that facility operator's underground facilities. [2011 c 263 § 15; 1984 c 144 § 8.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.100 Violation of RCW 19.122.090—Affirmative defense. (*Effective January 1, 2013.*) If charged with a violation of RCW 19.122.090, an equipment operator is deemed to have established an affirmative defense to such charges if:

- (1) The equipment operator was provided a valid excavation confirmation code;
- (2) The excavation was performed in an emergency situation;
- (3) The equipment operator was provided a false confirmation code by an identifiable third party; or
- (4) Notice of the excavation was not required under this chapter. [2011 c 263 § 16; 2005 c 448 § 6.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.110 False excavation confirmation code—Penalty. (*Effective January 1, 2013.*) Any person who intentionally provides an equipment operator with a false excavation confirmation code is guilty of a misdemeanor. [2011 c 263 § 17; 2005 c 448 § 7.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.130 Commission to contract with nonprofit entity—Safety committee—Review of violations of chapter. (*Effective January 1, 2013, until December 31, 2020.*)

(1) The commission must contract with a statewide, nonprofit entity whose purpose is to reduce damages to underground and above ground facilities, promote safe excavation practices, and review complaints of alleged violations of this chapter. The contract must not obligate funding by the commission for activities performed by the nonprofit entity or the safety committee under this section, and is therefore exempt under RCW 39.29.040(1) from the requirements of chapter 39.29 RCW.

(2) The contracting entity must create a safety committee to:

- (a) Advise the commission and other state agencies, the legislature, and local governments on best practices and train-

ing to prevent damage to underground utilities, and policies to enhance worker and public safety; and

(b) Review complaints alleging violations of this chapter involving practices related to underground facilities.

(3) The safety committee will consist of thirteen members, who must be nominated by represented groups and appointed by the contracting entity to staggered three-year terms. The safety committee must include representatives of:

- (a) Local governments;
 - (b) A natural gas utility subject to regulation under Titles 80 and 81 RCW;
 - (c) Contractors;
 - (d) Excavators;
 - (e) An electric utility subject to regulation under Title 80 RCW;
 - (f) A consumer-owned utility, as defined in RCW 19.27A.140;
 - (g) A pipeline company;
 - (h) The insurance industry;
 - (i) The commission; and
 - (j) A telecommunications company.
- (4) The safety committee must meet at least once every three months.

(5) The safety committee may review complaints of alleged violations of this chapter involving practices related to underground facilities. Any person may bring a complaint to the safety committee regarding an alleged violation.

(6) To review complaints of alleged violations, the safety committee must appoint at least three and not more than five members as a review committee. The review committee must include the same number of members representing excavators and facility operators. One member representing facility operators must also be a representative of a pipeline company or a natural gas utility subject to regulation under Titles 80 and 81 RCW. The review committee must also include a member representing the insurance industry.

(7) Before reviewing a complaint alleging a violation of this chapter, the review committee must notify the person making the complaint and the alleged violator of its review and of the opportunity to participate.

(8) The safety committee may provide written notification to the commission, with supporting documentation, that a person has likely committed a violation of this chapter, and recommend remedial action that may include a penalty amount, training, or education to improve public safety, or some combination thereof.

(9) This section expires December 31, 2020. [2011 c 263 § 18.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.140 Commission authority—Receipt of notification of violation of chapter—Referral to attorney general. (*Effective January 1, 2013, until December 31, 2020.*)

(1) The commission may enforce the civil penalties authorized in RCW 19.122.070 or 19.122.075 when it receives written notification from the safety committee created under RCW 19.122.130 indicating that a violation of this chapter has likely been committed by a person subject to regulation by the commission, or involving the underground facilities of such a person.

(2) If the commission receives written notification from the safety committee pursuant to RCW 19.122.130 that a violation of this chapter has likely been committed by a person who is not subject to regulation by the commission, and in which the underground facility involved is also not subject to regulation by the commission, the commission may refer the matter to the attorney general for enforcement of a civil penalty under RCW 19.122.070 or 19.122.075. The commission must provide funding for such enforcement. However, any costs and fees recovered by the attorney general pursuant to subsection (3) of this section must be deposited by the commission in the fund that paid for such enforcement.

(3) In a matter referred to it by the commission pursuant to subsection (2) of this section, the attorney general may bring an action to enforce the penalties authorized in RCW 19.122.070 or 19.122.075. In such an action, the court may award the state all costs of investigation and trial, including a reasonable attorneys' fee fixed by the court.

(4) This section expires December 31, 2020. [2011 c 263 § 19.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.150 Commission authority—Violations of chapter—Imposition of penalties. (Effective January 1, 2013, until December 31, 2020.) (1) The commission may investigate and enforce violations of RCW 19.122.055, 19.122.075, and 19.122.090 relating to pipeline facilities without initial referral to the safety committee created under RCW 19.122.130.

(2) If the commission's investigation of notifications received pursuant to RCW 19.122.140 or subsection (1) of this section substantiates violations of this chapter, the commission may impose penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and 19.122.090, and require training, education, or any combination thereof.

(3) With respect to referrals from the safety committee, the commission must consider any recommendation by the committee regarding enforcement and remedial actions involving an alleged violator.

(4) In an action to impose a penalty initiated by the commission under subsection (1) or (2) of this section, the penalty is due and payable when the person incurring the penalty receives a notice of penalty in writing from the commission describing the violation and advising the person that the penalty is due. The person incurring the penalty has fifteen days from the date the person receives the notice of penalty to file with the commission a request for mitigation or a request for a hearing. The commission must include this time limit information in the notice of penalty. After receiving a timely request for mitigation or hearing, the commission must suspend collection of the penalty until it issues a final order concerning the penalty or mitigation of that penalty. A person aggrieved by the commission's final order may seek judicial review, subject to provisions of the administrative procedure act, chapter 34.05 RCW.

(5) If a penalty imposed by the commission is not paid, the attorney general may, on the commission's behalf, file a civil action in superior court to collect the penalty.

(6) This section expires December 31, 2020. [2011 c 263 § 21.]

[2011 RCW Supp—page 388]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.160 Damage prevention account. (Effective January 1, 2013.) The damage prevention account is created in the custody of the state treasurer. All receipts from moneys directed by law or the commission to be deposited to the account must be deposited in the account. Expenditures from the account may be used only for purposes designated in RCW 19.122.170. Only the commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW. [2011 c 263 § 12.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.170 Damage prevention account—Use of funds. (Effective January 1, 2013.) The commission may use money deposited in the damage prevention account created in RCW 19.122.160 to:

(1) Develop and disseminate educational programming designed to improve worker and public safety relating to excavation and underground facilities; and

(2) Provide grants to persons who have developed educational programming that the commission and the safety committee created pursuant to RCW 19.122.130 deem appropriate for improving worker and public safety relating to excavation and underground facilities. [2011 c 263 § 13.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.180 Damage prevention account—Deposit of penalties. (Effective January 1, 2013.) All penalties collected pursuant to RCW 19.122.150 must be deposited in the damage prevention account created in RCW 19.122.160. [2011 c 263 § 22.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

19.122.901 Short title—2011 c 263. (Effective January 1, 2013.) This act may be known and cited as the underground utility damage prevention act. [2011 c 263 § 25.]

Report—Effective date—2011 c 263: See notes following RCW 19.122.010.

Chapter 19.146 RCW

MORTGAGE BROKER PRACTICES ACT

Sections

19.146.233 Subpoena authority—Application—Contents—Notice—Fees.

19.146.233 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

(a) State that an order is sought under this section;

(b) Adequately specify the documents, records, evidence, or testimony; and

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 5.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

Chapter 19.154 RCW IMMIGRATION SERVICES FRAUD PREVENTION ACT

(Formerly: Immigration assistant practices act)

Sections

19.154.010	Findings. (Effective October 20, 2011.)
19.154.020	Definitions. (Effective October 20, 2011.)
19.154.030	Repealed. (Effective October 20, 2011.)
19.154.040	Repealed. (Effective October 20, 2011.)
19.154.050	Repealed. (Effective October 20, 2011.)
19.154.060	Prohibited practices—Assistance with immigration matters. (Effective October 20, 2011.)
19.154.065	Immigration-related services not prohibited. (Effective October 20, 2011.)
19.154.070	Repealed. (Effective October 20, 2011.)
19.154.080	Repealed. (Effective October 20, 2011.)
19.154.090	Unfair and deceptive act—Unfair method of competition—Civil remedy. (Effective October 20, 2011.)
19.154.800	Application. (Effective October 20, 2011.)
19.154.900	Short title. (Effective October 20, 2011.)
19.154.902	Repealed. (Effective October 20, 2011.)

19.154.010 Findings. (Effective October 20, 2011.)

The legislature finds and declares that the practice by nonlawyers and other unauthorized persons of providing legal advice and legal services to others in immigration matters substantially affects the public interest. The practice of nonlawyers and other unauthorized persons providing immigration-related legal advice and legal services for compensation may impact the ability of their customers to reside and work within the United States and to establish and maintain stable families and business relationships. The legislature further finds and declares that the previous scheme for regulating the behavior of nonlawyers and other unauthorized persons who provide immigration-related services is inadequate to address the level of unfair and deceptive practices that exists in the marketplace and often contributes to the unauthorized practice of law. It is the intent of the legislature, through chapter 244, Laws of 2011, to prohibit nonlawyers and other unauthorized persons from providing immigration-related services that constitute the practice of law. [2011 c 244 § 1; 1989 c 117 § 1.]

Effective date—2011 c 244: "This act takes effect one hundred eighty days after final adjournment of the legislative session in which it is enacted [The secretary of state has determined that the effective date of this act is October 20, 2011.]" [2011 c 244 § 11.]

Evaluation—Report—2011 c 244: "(1)(a) The legislature recognizes that immigrants in Washington need legal services to assist them in immigration matters, and it is difficult for existing organizations to meet those needs because of high case loads and limited resources.

(b) The legislature also recognizes that the difference between offering nonlegal services and offering legal services in immigration matters is sometimes difficult to distinguish. Not understanding or recognizing the distinction between nonlegal services and legal services in immigration matters can result in a person engaging in the unauthorized practice of law and can result in irreparable consequences for immigrants who seek assistance.

(2) Therefore, the legislature respectfully requests that the supreme court's practice of law board, within available resources, evaluate the following:

(a) The specific services nonattorneys may provide to immigrants that do not rise to the level of the practice of law in immigration matters;

(b) The level of access to and the quality of nonlegal and legal services immigrants have and the ways in which access and quality can be improved;

(c) The level of need immigrants have for nonlegal services compared to the need for legal services in immigration matters.

(3) A report of the board's findings and recommendations must be presented to the legislature no later than December 1, 2011." [2011 c 244 § 9.]

19.154.020 Definitions. (Effective October 20, 2011.)

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

(1) "Compensation" means money, property, or anything else of value.

(2) "Immigration matter" means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person arising under immigration and naturalization law, executive order, or presidential proclamation, or pursuant to any action of the United States citizenship and immigration services, the United States department of labor, the United States department of state, the United States department of justice, the United States department of homeland security, the board of immigration appeals, or any other entity or agency having jurisdiction over immigration law.

(3) "Practice of law" has the definition given to it by the supreme court of Washington whether by rule or decision, and includes all exceptions and exclusions to that definition currently in place or hereafter created, whether by rule or decision. [2011 c 244 § 2; 1989 c 117 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Evaluation—Report—2011 c 244: See notes following RCW 19.154.010.

19.154.030 Repealed. (Effective October 20, 2011.)

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

19.154.040 Repealed. (Effective October 20, 2011.)

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

19.154.050 Repealed. (Effective October 20, 2011.)

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

19.154.060 Prohibited practices—Assistance with immigration matters. (Effective October 20, 2011.) (1)

Persons, other than those licensed to practice law in this state or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the practice of law in an immigration matter for compensation.

(2) Persons, other than those licensed to practice law in this state or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the following acts or practices, for compensation:

(a) Advising or assisting another person in determining the person's legal or illegal status for the purpose of an immigration matter;

(b) Selecting or assisting another in selecting, or advising another as to his or her answers on, a government agency form or document in an immigration matter;

(c) Selecting or assisting another in selecting, or advising another in selecting, a benefit, visa, or program to apply for in an immigration matter;

(d) Soliciting to prepare documents for, or otherwise representing the interests of, another in a judicial or administrative proceeding in an immigration matter;

(e) Explaining, advising, or otherwise interpreting the meaning or intent of a question on a government agency form in an immigration matter;

(f) Charging a fee for referring another to a person licensed to practice law;

(g) Selecting, drafting, or completing legal documents affecting the legal rights of another in an immigration matter.

(3) Persons, other than those holding an active license to practice law issued by the Washington state bar association or otherwise permitted to practice law or represent others under federal law in an immigration matter, are prohibited from engaging in the following acts or practices, regardless of whether compensation is sought:

(a) Representing, either orally or in any document, letterhead, advertisement, stationery, business card, web site, or other comparable written material, that he or she is a notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or using any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the area of immigration law;

(b) Representing, in any language, either orally or in any document, letterhead, advertisement, stationery, business card, web site, or other comparable written material, that he or she can or is willing to provide services in an immigration matter, if such services would constitute the practice of law.

(4)(a) The prohibitions of subsections (1) through (3) of this section shall not apply to the activities of nonlawyer assistants acting under the supervision of a person holding an active license to practice law issued by the Washington state bar association or otherwise permitted to practice law or represent others under federal law in an immigration matter.

(b) This section does not prohibit a person from offering translation services, regardless of whether compensation is sought. Translating words contained on a government form from English to another language and translating a person's words from another language to English does not constitute the unauthorized practice of law.

(5) In addition to complying with the prohibitions of subsections (1) through (3) of this section, persons licensed as a notary public under chapter 42.44 RCW who do not hold an active license to practice law issued by the Washington state bar association shall not use the term notario publico, notario, immigration assistant, immigration consultant, immigration specialist, or any other designation or title, in any language, that conveys or implies that he or she possesses professional legal skills in the areas of immigration law, when advertising notary public services in the conduct of their business. A violation of any provision of this chapter by a person licensed as a notary public under chapter 42.44 RCW shall constitute unprofessional conduct under the uniform regulation of business and professions act, chapter 18.235 RCW. [2011 c 244 § 3; 1989 c 117 § 6.]

Effective date—Evaluation—Report—2011 c 244: See notes following RCW 19.154.010.

19.154.065 Immigration-related services not prohibited. (Effective October 20, 2011.) Persons who are not licensed to practice law in this state or who are not otherwise permitted to represent others under federal law in an immigration matter may engage in the following services for compensation:

(1) Translate words on a government form that the person seeking services presents to the person providing translation services;

(2) Secure existing documents for the person seeking services. Existing documents include, for example, birth and marriage certificates; and

(3) Offer other immigration-related services that are not prohibited under this chapter or any other provision of law or do not constitute the practice of law. [2011 c 244 § 4.]

Effective date—Evaluation—Report—2011 c 244: See notes following RCW 19.154.010.

19.154.070 Repealed. (Effective October 20, 2011.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

19.154.080 Repealed. (Effective October 20, 2011.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

19.154.090 Unfair and deceptive act—Unfair method of competition—Civil remedy. (Effective October 20, 2011.) (1) The legislature finds and declares that any violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020.

(2) In addition to all remedies available in chapter 19.86 RCW, a person injured by a violation of this chapter may bring a civil action to recover the actual damages proximately caused by a violation of this chapter, or one thousand dollars, whichever is greater. [2011 c 244 § 5; 1989 c 117 § 9.]

Effective date—Evaluation—Report—2011 c 244: See notes following RCW 19.154.010.

19.154.800 Application. (Effective October 20, 2011.) Nothing in this chapter shall apply to or regulate any business

to the extent such regulation is prohibited or preempted by federal law. [2011 c 244 § 7.]

Effective date—Evaluation—Report—2011 c 244: See notes following RCW 19.154.010.

19.154.900 Short title. (Effective October 20, 2011.)

This chapter shall be known and cited as the "immigration services fraud prevention act." [2011 c 244 § 8; 1989 c 117 § 11.]

Effective date—Evaluation—Report—2011 c 244: See notes following RCW 19.154.010.

19.154.902 Repealed. (Effective October 20, 2011.)

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

Chapter 19.170 RCW

PROMOTIONAL ADVERTISING OF PRIZES

Sections

19.170.020 Definitions.

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

(1) "Continuing obligation check" means a document that is a check, draft, note, bond, or other negotiable instrument that, when cashed, deposited, or otherwise used, imposes on the payee an obligation to enter into a loan transaction. This definition does not include checks, drafts, or other negotiable instruments that are used by consumers to take advances on revolving loans, credit cards, or revolving credit accounts.

(2) "Financial institution" means any bank, trust company, savings bank, savings and loan association, credit union, industrial loan company, or consumer finance lender subject to regulation by an official agency of this state or the United States, and any subsidiary or affiliate thereof.

(3) "Offer" means a written notice delivered by hand, mail, or other print medium offering goods, services, or property made as part of a promotion to a person based on a representation that the person has been awarded, or will be awarded, a prize.

(4) "Person" means an individual, corporation, the state or its subdivisions or agencies, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(5) "Prize" means a gift, award, travel coupon or certificate, free item, or any other item offered in a promotion that is different and distinct from the goods, service, or property promoted by a sponsor. "Prize" does not include an item offered in a promotion where all of the following elements are present:

(a) No element of chance is involved in obtaining the item offered in the promotion;

(b) The recipient has the right to review the merchandise offered for sale without obligation for at least seven days, and has a right to obtain a full refund in thirty days for the return of undamaged merchandise;

(c) The recipient may keep the item offered in the promotion without obligation; and

(d) The recipient is not required to attend any sales presentation or spend any sum in order to receive the item offered in the promotion.

(6) "Promoter" means a person conducting a promotion.

(7) "Promotion" means an advertising program, sweepstakes, contest, direct giveaway, or solicitation directed to specific named individuals, that includes the award of or chance to be awarded a prize, but does not include a promotional contest of chance under RCW 9.46.0356(1)(b).

(8) "Simulated check" means a document that is not currency or a check, draft, note, bond, or other negotiable instrument but has the visual characteristics thereof. "Simulated check" does not include a nonnegotiable check, draft, note, or other instrument that is used for soliciting orders for the purchase of checks, drafts, notes, bonds, or other instruments and that is clearly marked as a sample, specimen, or nonnegotiable.

(9) "Sponsor" means a person on whose behalf a promotion is conducted to promote or advertise goods, services, or property of that person.

(10) "Verifiable retail value" means:

(a) A price at which a promoter or sponsor can demonstrate that a substantial number of prizes have been sold at retail in the local market by a person other than the promoter or sponsor; or

(b) If the prize is not available for retail sale in the local market, the retail fair market value in the local market of an item substantially similar in each significant aspect, including size, grade, quality, quantity, ingredients, and utility; or

(c) If the value of the prize cannot be established under (a) or (b) of this subsection, then the prize may be valued at no more than three times its cost to the promoter or sponsor. [2011 c 303 § 3; 1991 c 227 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Intent—2011 c 303: See note following RCW 9.46.0356.

Chapter 19.182 RCW

FAIR CREDIT REPORTING ACT

Sections

19.182.040 Consumer report—Prohibited information—Exceptions.

19.182.130 Obtaining information under false pretenses—Penalty.

19.182.140 Provision of information to unauthorized person—Penalty.

19.182.040 Consumer report—Prohibited information—Exceptions. (1) Except as authorized under subsection (2) of this section, no consumer reporting agency may make a consumer report containing any of the following items of information:

(a) Bankruptcies that, from date of adjudication of the most recent bankruptcy, antedate the report by more than ten years;

(b) Suits and judgments that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period;

(c) Paid tax liens that, from date of payment, antedate the report by more than seven years;

(d) Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years;

(e) Records of arrest, indictment, or conviction of an adult for a crime that, from date of disposition, release, or parole, antedate the report by more than seven years;

(f) Juvenile records, as defined in RCW 13.50.010(1)(c), when the subject of the records is twenty-one years of age or older at the time of the report; and

(g) Any other adverse item of information that antedates the report by more than seven years.

(2) Subsection (1)(a) through (e) and (g) of this section is not applicable in the case of a consumer report to be used in connection with:

(a) A credit transaction involving, or that may reasonably be expected to involve, a principal amount of fifty thousand dollars or more;

(b) The underwriting of life insurance involving, or that may reasonably be expected to involve, a face amount of fifty thousand dollars or more; or

(c) The employment of an individual at an annual salary that equals, or that may reasonably be expected to equal, twenty thousand dollars or more. [2011 c 333 § 2; 1993 c 476 § 6.]

Findings—Intent—2011 c 333: "The legislature finds that:

(1) One of the goals of the juvenile justice system is to rehabilitate juvenile offenders and promote their successful reintegration into society. Without opportunities to reintegrate, juveniles suffer increased recidivism and decreased economic function.

(2) The public has an interest in accessing information relating to juvenile records for public safety and research purposes.

(3) The public's legitimate interest in accessing personal information must be balanced with the rehabilitative goals of the juvenile justice system. All benefit when former juvenile offenders, after paying their debt to society, reintegrate and contribute to their local communities as productive citizens.

(4) It is the intent of the legislature to balance the rehabilitative and reintegration needs of an effective juvenile justice system with the public's need to access personal information for public safety and research purposes." [2011 c 333 § 1.]

19.182.130 Obtaining information under false pretenses—Penalty. A person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses is subject to a fine of up to five thousand dollars or imprisonment for up to three hundred sixty-four days, or both. [2011 c 96 § 21; 1993 c 476 § 15.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

19.182.140 Provision of information to unauthorized person—Penalty. An officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information is subject to a fine of up to five thousand dollars or imprisonment for up to three hundred sixty-four days, or both. [2011 c 96 § 22; 1993 c 476 § 16.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 19.230 RCW

UNIFORM MONEY SERVICES ACT

Sections

19.230.133 Subpoena authority—Application—Contents—Notice—Fees.

[2011 RCW Supp—page 392]

19.230.133 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

(a) State that an order is sought under this section;

(b) Adequately specify the documents, records, evidence, or testimony; and

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 6.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

Chapter 19.240 RCW GIFT CERTIFICATES

Sections

19.240.010 Definitions.

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

(1) "Artistic and cultural organization" has the same meaning as in RCW 82.04.4328.

(2) "Charitable organization" means an organization exempt from tax under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)).

(3) "Fund-raising activity" has the same meaning as in RCW 82.04.3651.

(4)(a) "Gift card" means a record as described in subsection (5) of this section in the form of a card, or a stored value card or other physical medium, containing stored value primarily intended to be exchanged for consumer goods and services.

(b) "Gift card" does not include prepaid telephone calling cards or prepaid commercial mobile radio services as defined in 47 C.F.R. 20.3.

(5)(a) "Gift certificate" means an instrument evidencing a promise by the seller or issuer of the record that consumer goods or services will be provided to the bearer of the record to the value or credit shown in the record and includes gift cards.

(b) "Gift certificate" does not include prepaid telephone calling cards or prepaid commercial mobile radio services as defined in 47 C.F.R. 20.3.

(6) "Bearer" means a person with a right to receive consumer goods and services under the terms of a gift certificate, without regard to any fee, expiration date, or dormancy or inactivity charge.

(7) "Issue" means to sell or otherwise provide a gift certificate to any person, and includes reloading or adding value to an existing gift certificate.

(8) "Stored value" has the same meaning as the term "closed loop stored value device" defined in RCW 19.230.010. [2011 c 213 § 1; 2004 c 168 § 2.]

Chapter 19.280 RCW

ELECTRIC UTILITY RESOURCE PLANS

Sections

19.280.030 Development of a resource plan—Requirements of a resource plan.

19.280.030 Development of a resource plan—Requirements of a resource plan. Each electric utility must develop a plan consistent with this section.

(1) Utilities with more than twenty-five thousand customers that are not full requirements customers shall develop or update an integrated resource plan by September 1, 2008. At a minimum, progress reports reflecting changing conditions and the progress of the integrated resource plan must be produced every two years thereafter. An updated integrated resource plan must be developed at least every four years subsequent to the 2008 integrated resource plan. The integrated resource plan, at a minimum, must include:

(a) A range of forecasts, for at least the next ten years, of projected customer demand which takes into account economic data and customer usage;

(b) An assessment of commercially available conservation and efficiency resources. Such assessment may include, as appropriate, high efficiency cogeneration, demand response and load management programs, and currently employed and new policies and programs needed to obtain the conservation and efficiency resources;

(c) An assessment of commercially available, utility scale renewable and nonrenewable generating technologies including a comparison of the benefits and risks of purchasing power or building new resources;

(d) A comparative evaluation of renewable and nonrenewable generating resources, including transmission and distribution delivery costs, and conservation and efficiency resources using "lowest reasonable cost" as a criterion;

(e) The integration of the demand forecasts and resource evaluations into a long-range assessment describing the mix of supply side generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost and risk to the utility and its ratepayers; and

(f) A short-term plan identifying the specific actions to be taken by the utility consistent with the long-range integrated resource plan.

(2) All other utilities may elect to develop a full integrated resource plan as set forth in subsection (1) of this section or, at a minimum, shall develop a resource plan that:

(a) Estimates loads for the next five and ten years;

(b) Enumerates the resources that will be maintained and/or acquired to serve those loads; and

(c) Explains why the resources in (b) of this subsection were chosen and, if the resources chosen are not renewable resources or conservation and efficiency resources, why such a decision was made.

(3) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(4) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(5) Plans shall not be a basis to bring legal action against electric utilities.

(6) Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form. [2011 c 180 § 305; 2006 c 195 § 3.]

Findings—Purpose—2011 c 180: See note following RCW 80.80.010.

Chapter 19.330 RCW

STOLEN OR MISAPPROPRIATED INFORMATION TECHNOLOGY

Sections

19.330.010 Definitions.

19.330.020 Unfair acts.

19.330.030 Acts not constituting violation of chapter.

19.330.040 Injunction or attachment order—Persons violating RCW 19.330.020.

19.330.050 Notice of violation required.

19.330.060 Who may bring an action—Injunction—Damages—Dismissal—Court authority.

19.330.070 Attachment of articles or products.

19.330.080 Third parties.

19.330.090 Third parties—Time for award of damages.

19.330.100 Application of consumer protection act.

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

(1) "Article or product" means any tangible article or product, but excludes: (a) Any services sold, offered for sale, or made available in this state, including free services and online services; (b) any product subject to regulation by the United States food and drug administration and that is primarily used for medical or medicinal purposes; (c) food and beverages; and (d) restaurant services.

(2) "Copyrightable end product" means a work within the subject matter of copyright as specified in section 102 of Title 17, United States Code, and which for the purposes of this chapter includes mask works protection as specified in section 902 of Title 17, United States Code.

(3) "Essential component" means a component of an article or product provided or to be provided to a third party pursuant to a contract, including a purchase order, without which the article or product will not perform as intended and for which there is no substitute component available that offers a

comparable range and quality of functionalities and is available in comparable quantities and at a comparable price.

(4) "Manufacture" means to directly manufacture, produce, or assemble an article or product subject to RCW 19.330.020, in whole or substantial part, but does not include contracting with or otherwise engaging another person, or that person engaging another person, to develop, manufacture, produce, or assemble an article or product subject to RCW 19.330.020.

(5) "Material competitive injury" means at least a three percent retail price difference between the article or product made in violation of RCW 19.330.020 designed to harm competition and a directly competing article or product that was manufactured without the use of stolen or misappropriated information technology, with such a price difference occurring over a four-month period of time.

(6) "Retail price" means the retail price of stolen or misappropriated information technology charged at the time of, and in the jurisdiction where, the alleged theft or misappropriation occurred, multiplied by the number of stolen or misappropriated items used in the business operations of the person alleged to have violated RCW 19.330.020.

(7)(a) "Stolen or misappropriated information technology" means hardware or software that the person referred to in RCW 19.330.020 acquired, appropriated, or used without the authorization of the owner of the information technology or the owner's authorized licensee in violation of applicable law, but does not include situations in which the hardware or software alleged to have been stolen or misappropriated was not available for retail purchase on a stand-alone basis at or before the time it was acquired, appropriated, or used by such a person.

(b) Information technology is considered to be used in a person's business operations if the person uses the technology in the manufacture, distribution, marketing, or sales of the articles or products subject to RCW 19.330.020. [2011 c 98 § 1.]

19.330.020 Unfair acts. Any person who manufactures an article or product while using stolen or misappropriated information technology in its business operations after notice and opportunity to cure as provided in RCW 19.330.050 and, with respect to remedies sought under RCW 19.330.060(6) or 19.330.070, causes a material competitive injury as a result of such use of stolen or misappropriated information technology, is deemed to engage in an unfair act where such an article or product is sold or offered for sale in this state, either separately or as a component of another article or product, and in competition with an article or product sold or offered for sale in this state that was manufactured without violating this section. A person who engages in such an unfair act, and any articles or products manufactured by the person in violation of this section, is subject to the liabilities and remedial provisions of this chapter in an action by the attorney general or any person described in RCW 19.330.060(5), except as provided in RCW 19.330.030 through 19.330.090. [2011 c 98 § 2.]

19.330.030 Acts not constituting violation of chapter.

No action may be brought under this chapter, and no liability results, where:

(1) The end article or end product sold or offered for sale in this state and alleged to violate RCW 19.330.020 is:

(a) A copyrightable end product;

(b) Merchandise manufactured by or on behalf of, or pursuant to a license from, a copyright owner and which displays or embodies a name, character, artwork, or other indicia of or from a work that falls within (a) of this subsection, or merchandise manufactured by or on behalf of, or pursuant to a license from, a copyright or trademark owner and that displays or embodies a name, character, artwork, or other indicia of or from a theme park, theme park attraction, or other facility associated with a theme park; or

(c) Packaging, carrier media, or promotional or advertising materials for any end article, end product, or merchandise that falls within (a) or (b) of this subsection;

(2) The allegation that the information technology is stolen or misappropriated is based on a claim that the information technology or its use infringes a patent or misappropriates a trade secret under applicable law or that could be brought under any provision of Title 35 of the United States Code;

(3) The allegation that the information technology is stolen or misappropriated is based on a claim that the defendant's use of the information technology violates the terms of a license that allows users to modify and redistribute any source code associated with the technology free of charge; or

(4) The allegation is based on a claim that the person violated RCW 19.330.020 by aiding, abetting, facilitating, or assisting someone else to acquire, appropriate, use, sell, or offer to sell, or by providing someone else with access to, information technology without authorization of the owner of the information technology or the owner's authorized licensee in violation of applicable law. [2011 c 98 § 3.]

19.330.040 Injunction or attachment order—Persons violating RCW 19.330.020. No injunction may issue against a person other than the person adjudicated to have violated RCW 19.330.020, and no attachment order may issue against articles or products other than articles or products in which the person alleged to violate RCW 19.330.020 holds title. A person other than the person alleged to violate RCW 19.330.020 includes any person other than the actual manufacturer who contracts with or otherwise engages another person to develop, manufacture, produce, market, distribute, advertise, or assemble an article or product alleged to violate RCW 19.330.020. [2011 c 98 § 4.]

19.330.050 Notice of violation required. (1) No action may be brought under RCW 19.330.020 unless the person subject to RCW 19.330.020 received written notice of the alleged use of the stolen or misappropriated information technology from the owner or exclusive licensee of the information technology or the owner's agent and the person: (a) Failed to establish that its use of the information technology in question did not violate RCW 19.330.020; or (b) failed, within ninety days after receiving such a notice, to cease use of the owner's stolen or misappropriated information technology. However, if the person commences and thereafter

proceeds diligently to replace the information technology with information technology whose use would not violate RCW 19.330.020, such a period must be extended for an additional period of ninety days, not to exceed one hundred eighty days total. The information technology owner or the owner's agent may extend any period described in this section.

(2) To satisfy the requirements of this section, written notice must, under penalty of perjury: (a) Identify the stolen or misappropriated information technology; (b) identify the lawful owner or exclusive licensee of the information technology; (c) identify the applicable law the person is alleged to be violating and state that the notifier has a reasonable belief that the person has acquired, appropriated, or used the information technology in question without authorization of the owner of the information technology or the owner's authorized licensee in violation of such applicable law; (d) to the extent known by the notifier, state the manner in which the information technology is being used by the defendant; (e) state the articles or products to which the information technology relates; and (f) specify the basis and the particular evidence upon which the notifier bases such an allegation.

(3) The written notification must state, under penalty of perjury, that, after a reasonable and good faith investigation, the information in the notice is accurate based on the notifier's reasonable knowledge, information, and belief. [2011 c 98 § 5.]

19.330.060 Who may bring an action—Injunction—Damages—Dismissal—Court authority. (1) No earlier than ninety days after the provision of notice in accordance with RCW 19.330.050, the attorney general, or any person described in subsection (5) of this section, may bring an action against any person that is subject to RCW 19.330.020:

(a) To enjoin violation of RCW 19.330.020, including by enjoining the person from selling or offering to sell in this state articles or products that are subject to RCW 19.330.020, except as provided in subsection (6) of this section. However, such an injunction does not encompass articles or products to be provided to a third party that establishes that such a third party has satisfied one or more of the affirmative defenses set forth in RCW 19.330.080(1) with respect to the manufacturer alleged to have violated RCW 19.330.020;

(b) Only after a determination by the court that the person has violated RCW 19.330.020, to recover the greater of:

(i) Actual direct damages, which may be imposed only against the person who violated RCW 19.330.020; or

(ii) Statutory damages of no more than the retail price of the stolen or misappropriated information technology, which may be imposed only against the person who violated RCW 19.330.020; or

(c) In the event the person alleged to have violated RCW 19.330.020 has been subject to a final judgment or has entered into a final settlement, or any products manufactured by such a person and alleged to violate RCW 19.330.020 have been the subject of an injunction or attachment order, in any federal or state court in this state or any other state, arising out of the same theft or misappropriation of information technology, the court shall dismiss the action with prejudice. If such a person is a defendant in an ongoing action, or any products manufactured by such a person and alleged to vio-

late RCW 19.330.020 are the subject of an ongoing injunction or attachment order, in any federal or state court in this state or any other state, arising out of the same theft or misappropriation of information technology, the court shall stay the action against such a person pending resolution of the other action. In the event the other action results in a final judgment or final settlement, the court shall dismiss the action with prejudice against the person. Dismissals under this subsection are res judicata to actions filed against the person alleged to have violated RCW 19.330.020 arising out of the same theft or misappropriation of information technology.

(2) After determination by the court that a person has violated RCW 19.330.020 and entry of a judgment against the person for violating RCW 19.330.020, the attorney general, or a person described in subsection (5) of this section, may add to the action a claim for actual direct damages against a third party who sells or offers to sell in this state products made by that person in violation of RCW 19.330.020, subject to the provisions of RCW 19.330.080. However, damages may be imposed against a third party only if:

(a) The third party's agent for service of process was properly served with a copy of a written notice sent to the person alleged to have violated RCW 19.330.020 that satisfies the requirements of RCW 19.330.050 at least ninety days prior to the entry of the judgment;

(b) The person who violated RCW 19.330.020 did not make an appearance or does not have sufficient attachable assets to satisfy a judgment against the person;

(c) Such a person either manufactured the final product or produced a component equal to thirty percent or more of the value of the final product;

(d) Such a person has a direct contractual relationship with the third party respecting the manufacture of the final product or component; and

(e) The third party has not been subject to a final judgment or entered into a final settlement in any federal or state court in this state or any other state arising out of the same theft or misappropriation of information technology. However, in the event the third party is a party to an ongoing suit for damages, or has entered an appearance as an interested third party in proceedings in rem, in any federal or state court in this state or any other state arising out of the same theft or misappropriation of information technology, the court shall stay the action against the third party pending resolution of the other action. In the event the other action results in a final judgment, the court shall dismiss the action with prejudice against the third party and dismiss any in rem action as to any articles or products manufactured for such a third party or that have been or are to be supplied to such a third party. Dismissals under this subsection are res judicata to actions filed against the person alleged to have violated RCW 19.330.020 arising out of the same theft or misappropriation of information technology.

(3) An award of damages against such a third party pursuant to subsection (2) of this section must be the lesser of the retail price of the stolen or misappropriated information technology at issue or two hundred fifty thousand dollars, less any amounts recovered from the person adjudicated to have violated RCW 19.330.020, and subsection (4)(a) of this sec-

tion does not apply to such an award or recovery against the third party.

(4) In an action under this chapter, a court may:

(a) Against the person adjudicated to have violated RCW 19.330.020, increase the damages up to three times the damages authorized by subsection (1)(b) of this section where the court finds that the person's use of the stolen or misappropriated information technology was willful;

(b) With respect to an award under subsection (1) of this section only, award costs and reasonable attorneys' fees to: (i) A prevailing plaintiff in actions brought by an injured person under RCW 19.330.020; or (ii) a prevailing defendant in actions brought by an allegedly injured person; and

(c) With respect to an action under subsection (2) of this section brought by a private plaintiff only, award costs and reasonable attorneys' fees to a third party for all litigation expenses (including, without limitation, discovery expenses) incurred by that party if it prevails on the requirement set forth in subsection (2)(c) of this section or who qualifies for an affirmative defense under RCW 19.330.080. However, in a case in which the third party received a copy of the notification described in subsection (2)(a) of this section at least ninety days before the filing of the action under subsection (2) of this section, with respect to a third party's reliance on the affirmative defenses set forth in RCW 19.330.080(1) (c) and (d), the court may award costs and reasonable attorneys' fees only if all of the conduct on which the affirmative defense is based was undertaken by the third party, and the third party notified the plaintiff of the conduct, prior to the end of the ninety-day period.

(5) A person is deemed to have been injured by the sale or offer for sale of a directly competing article or product subject to RCW 19.330.020 if the person establishes by a preponderance of the evidence that:

(a) The person manufactures articles or products that are sold or offered for sale in this state in direct competition with articles or products that are subject to RCW 19.330.020;

(b) The person's articles or products were not manufactured using stolen or misappropriated information technology of the owner of the information technology;

(c) The person suffered economic harm, which may be shown by evidence that the retail price of the stolen or misappropriated information technology was twenty thousand dollars or more; and

(d) If the person is proceeding in rem or seeks injunctive relief, that the person suffered material competitive injury as a result of the violation of RCW 19.330.020.

(6)(a) If the court determines that a person found to have violated RCW 19.330.020 lacks sufficient attachable assets in this state to satisfy a judgment rendered against it, the court may enjoin the sale or offering for sale in this state of any articles or products subject to RCW 19.330.020, except as provided in RCW 19.330.040.

(b) To the extent that an article or product subject to RCW 19.330.020 is an essential component of a third party's article or product, the court shall deny injunctive relief as to such an essential component, provided that the third party has undertaken good faith efforts within the third party's rights under its applicable contract with the manufacturer to direct the manufacturer of the essential component to cease the theft or misappropriation of information technology in violation of

RCW 19.330.020, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease the theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue.

(7) The court shall determine whether a cure period longer than the period reflected in RCW 19.330.050 would be reasonable given the nature of the use of the information technology that is the subject of the action and the time reasonably necessary either to bring such use into compliance with applicable law or to replace the information technology with information technology that would not violate RCW 19.330.020. If the court deems that a longer cure period would be reasonable, then the action shall be stayed until the end of that longer cure period. If by the end of that longer cure period, the defendant has established that its use of the information technology in question did not violate RCW 19.330.020, or the defendant ceased use of the stolen or misappropriated information technology, then the action must be dismissed. [2011 c 98 § 6.]

19.330.070 Attachment of articles or products. (1) In a case in which the court is unable to obtain personal jurisdiction over a person subject to RCW 19.330.020, the court may proceed in rem against any articles or products subject to RCW 19.330.020 sold or offered for sale in this state in which the person alleged to have violated RCW 19.330.020 holds title. Except as provided in RCW 19.330.040 and subsection[s] (2) through (4) of this section, all such articles or products are subject to attachment at or after the time of filing a complaint, regardless of the availability or amount of any monetary judgment.

(2) At least ninety days prior to the enforcement of an attachment order against articles or products pursuant to subsection (1) of this section, the court shall notify any person in possession of the articles or products of the pending attachment order. Prior to the expiration of the ninety-day period, any person for whom the articles or products were manufactured, or to whom the articles or products have been or are to be supplied, pursuant to an existing contract or purchase order, may:

(a) Establish that the person has satisfied one or more of the affirmative defenses set forth in RCW 19.330.080(1) with respect to the manufacturer alleged to have violated RCW 19.330.020, in which case the attachment order must be dissolved only with respect to those articles or products that were manufactured for such a person, or have been or are to be supplied to such a person, pursuant to an existing contract or purchase order; or

(b) Post a bond with the court equal to the retail price of the allegedly stolen or misappropriated information technology or twenty-five thousand dollars, whichever is less, in which case the court shall stay enforcement of the attachment order against the articles or products and shall proceed on the basis of its jurisdiction over the bond. The person posting the bond shall recover the full amount of such bond, plus interest, after the issuance of a final judgment.

(3) In the event the person posting the bond pursuant to subsection (2)(b) of this section is entitled to claim an affir-

mative defense in RCW 19.330.080, and that person establishes with the court that the person is entitled to any affirmative defense, the court shall award costs and reasonable attorneys' fees to the person posting the bond and against the plaintiff in the event the plaintiff proceeds with an action pursuant to RCW 19.330.060(2) against the person posting the bond.

(4) In the event that the court does not provide notification as described in subsection (2) of this section, the court, upon motion of any third party, shall stay the enforcement of the attachment order for ninety days as to articles or products manufactured for the third party, or that have been or are to be supplied to the third party, pursuant to an existing contract or purchase order, during which ninety-day period the third party may avail itself of the options set forth in subsection (2)(a) and (b) of this section. [2011 c 98 § 7.]

19.330.080 Third parties. (1) A court may not award damages against any third party pursuant to RCW 19.330.060(2) where that party, after having been afforded reasonable notice of at least ninety days by proper service upon such a party's agent for service of process and opportunity to plead any of the affirmative defenses set forth in this subsection, establishes by a preponderance of the evidence any of the following:

(a) Such a person is the end consumer or end user of an article or product subject to RCW 19.330.020, or acquired the article or product after its sale to an end consumer or end user;

(b) Such a person is a business with annual revenues not in excess of fifty million dollars;

(c) The person acquired the articles or products:

(i) And had either: A code of conduct or other written document governing the person's commercial relationships with the manufacturer adjudicated to have violated RCW 19.330.020 and which includes commitments, such as general commitments to comply with applicable laws, that prohibit use of the stolen or misappropriated information technology by such manufacturer; or written assurances from the manufacturer of the articles or products that the articles or products, to the manufacturer's reasonable knowledge, were manufactured without the use of stolen or misappropriated information technology in the manufacturer's business operations. However, with respect to this subsection (c)(i), within one hundred eighty days of receiving written notice of the judgment against the manufacturer for a violation of RCW 19.330.020 and a copy of a written notice that satisfies the requirements of RCW 19.330.050, the person must undertake commercially reasonable efforts to do any of the following:

(A) Exchange written correspondence confirming that such a manufacturer is not using the stolen or misappropriated information technology in violation of RCW 19.330.020, which may be satisfied, without limitation, by obtaining written assurances from the manufacturer accompanied by copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue;

(B) Direct the manufacturer to cease the theft or misappropriation, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease such theft or misappropriation and

demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue; and for purposes of clarification, the third party need take no additional action to fully avail itself of this affirmative defense; or

(C) In a case in which the manufacturer has failed to cease such a theft or misappropriation within the one hundred eighty-day period, and the third party has not fulfilled either option (c)(i)(A) of this subsection or option (c)(i)(B) of this subsection, cease the future acquisition of the articles or products from the manufacturer during the period that the manufacturer continues to engage in the theft or misappropriation subject to RCW 19.330.020 where doing so would not constitute a breach of an agreement between the person and the manufacturer for the manufacture of the articles or products in question that was entered into on or before one hundred eighty days after July 22, 2011; or

(ii) Pursuant to an agreement between the person and a manufacturer for the manufacture of the articles or products in question that was entered into before one hundred eighty days after July 22, 2011. However, within one hundred eighty days of receiving written notice of the judgment against the manufacturer for a violation of RCW 19.330.020 and a copy of a written notice that satisfies the requirements of RCW 19.330.050, the person must undertake commercially reasonable efforts to do any of the following:

(A) Obtain from the manufacturer written assurances that such a manufacturer is not using the stolen or misappropriated information technology in violation of RCW 19.330.020, which may be satisfied, without limitation, by obtaining written assurances from the manufacturer accompanied by copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue;

(B) Direct the manufacturer to cease the theft or misappropriation, which may be satisfied, without limitation, by the third party issuing a written directive to the manufacturer demanding that it cease such theft or misappropriation and demanding that the manufacturer provide the third party with copies of invoices, purchase orders, licenses, or other verification of lawful use of the information technology at issue; and for purposes of clarification, the third party need take no additional action to fully avail itself of this affirmative defense; or

(C) In a case in which the manufacturer has failed to cease the theft or misappropriation within the one hundred eighty-day period, and the third party has not fulfilled either option (c)(ii)(A) of this subsection or option (c)(ii)(B) of this subsection, cease the future acquisition of the articles or products from the manufacturer during the period that the manufacturer continues to engage in the theft or misappropriation subject to RCW 19.330.020 where doing so would not constitute a breach of such agreement;

(d) The person has made commercially reasonable efforts to implement practices and procedures to require its direct manufacturers, in manufacturing articles or products for such person, not to use stolen or misappropriated information technology in violation of RCW 19.330.020. A person may satisfy this subsection (1)(d) by:

(i) Adopting and undertaking commercially reasonable efforts to implement a code of conduct or similar written requirements, which are applicable to the person's direct manufacturers, that prohibit the use of stolen or misappropriated information technology by such a manufacturer, subject to a right of audit, and the person either: (A) Has a practice of auditing its direct manufacturers on a periodic basis in accordance with generally accepted industry standards; or (B) requires in its agreements with its direct manufacturers that they submit to audits by a third party, which may include a third-party association of businesses representing the owner of the stolen or misappropriated intellectual property, and further provides that a failure to remedy any deficiencies found in such an audit that constitute a violation of the applicable law of the jurisdiction where the deficiency occurred constitutes a breach of the contract, subject to cure within a reasonable period of time; or

(ii) Adopting and undertaking commercially reasonable efforts to implement a code of conduct or similar written requirements, which are applicable to the person's direct manufacturers, that prohibit use of stolen or misappropriated information technology by such a manufacturer, and the person undertakes practices and procedures to address compliance with the prohibition against the use of the stolen or misappropriated information technology in accordance with the applicable code of conduct or written requirements; or

(e) The person does not have a contractual relationship with the person alleged to have violated RCW 19.330.020 respecting the manufacture of the articles or products alleged to have been manufactured in violation of RCW 19.330.020.

(2) A third party must have the opportunity to be heard regarding whether an article or product is an essential component provided or to be provided to a third party, and must have the right to file a motion to dismiss any action brought against it under RCW 19.330.060(2).

(3) The court may not enforce any award for damages against such a third party until after the court has ruled on that party's claim of eligibility for any of the affirmative defenses set out in this section, and prior to such a ruling may allow discovery, in an action under RCW 19.330.060(2), only on the particular defenses raised by the third party.

(4) The court shall allow discovery against a third party on an issue only after all discovery on that issue between the parties has been completed and only if the evidence produced as a result of the discovery does not resolve an issue of material dispute between the parties.

(5) Any confidential or otherwise sensitive information submitted by a party pursuant to this section is subject to a protective order. [2011 c 98 § 8.]

19.330.090 Third parties—Time for award of damages. A court may not enforce an award of damages against a third party pursuant to RCW 19.330.060(2) for a period of eighteen months from July 22, 2011. [2011 c 98 § 9.]

19.330.100 Application of consumer protection act. A violation of this chapter may not be considered a violation of the state consumer protection act, and chapter 19.86 RCW does not apply to this chapter. The remedies provided under

this chapter are the exclusive remedies for the parties. [2011 c 98 § 10.]

Title 20

COMMISSION MERCHANTS— AGRICULTURAL PRODUCTS

Chapters

20.01 Agricultural products—Commission merchants, dealers, brokers, buyers, agents.

Chapter 20.01 RCW

AGRICULTURAL PRODUCTS— COMMISSION MERCHANTS, DEALERS, BROKERS, BUYERS, AGENTS

Sections

20.01.010	Definitions.
20.01.020	Rules and regulations—Enforcement of chapter—Interference prohibited.
20.01.030	Exemptions.
20.01.100	Issuance of license—Expiration date—Fraudulent application grounds for refusal, revocation.
20.01.110	Publication of list of licensees and rules—Posting license.
20.01.120	Vehicle license plates.
20.01.150	Denial, suspension, revocation of licenses, probationary orders—Authority.
20.01.170	Denial, suspension, revocation of licenses, probationary orders—Subpoenas, witnesses, testimony, fees.
20.01.180	Denial, suspension, revocation of licenses, probationary orders—Findings and conclusions—Record.
20.01.190	Denial, suspension, revocation of licenses, probationary orders—Final action in writing—Appeal to superior court.
20.01.205	License suspension—Noncompliance with support order—Reissuance.
20.01.212	Livestock dealers bonded under federal law.
20.01.240	Claims against commission merchant, dealer.
20.01.250	Failure of consignor to file claim, time limitation.
20.01.260	Director not liable if circumstances prevent ascertainment of creditors—Demand on bond.
20.01.280	Action on bond after refusal to pay—New bond, failure to file.
20.01.310	Oaths, testimony, witnesses, subpoenas—Contempt proceedings—Records as evidence.
20.01.330	Denial, revocation, suspension, or condition of licenses, probationary orders—Grounds.
20.01.340	Denial, revocation, suspension of licenses, probationary orders—Previous violations as grounds.
20.01.350	Denial, revocation, suspension of licenses, probationary orders—Hearing, investigation—Findings required—Notices.
20.01.390	When dealer must pay for products delivered to him or her.
20.01.440	Commission merchant's copy of records to be retained—Inspection—Department's certificate of condition, quality, etc.
20.01.475	Licensee under chapter—Prima facie evidence acting as licensee handling agricultural products.
20.01.510	Processor's form showing maximum processing capacity.
20.01.520	Processor to have grower contracts and commitments on file.
20.01.530	Grower may file form showing crops processor is committed to purchase.
20.01.540	Committing to purchase more crops than plants can process—Violation.
20.01.550	Discrimination by processor.

20.01.010 Definitions. As used in this title the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Agent" means any person who, on behalf of any commission merchant, dealer, broker, or cash buyer, acts as liaison between a consignor and a principal, or receives, contracts for, or solicits any agricultural product from the consignor thereof or who negotiates the consignment or purchase

of any agricultural product on behalf of any commission merchant, dealer, broker, or cash buyer and who transacts all or a portion of that business at any location other than at the principal place of business of his or her employer. With the exception of an agent for a commission merchant or dealer handling horticultural products, an agent may operate only in the name of one principal and only to the account of that principal.

(2) "Agricultural product" means any unprocessed horticultural, vermicultural and its by-products, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products. "Agricultural product" also includes (a) mint or mint oil processed by or for the producer thereof, hay and straw baled or prepared for market in any manner or form and livestock; and (b) agricultural seed, flower seed, vegetable seed, other crop seed, and seeds, as defined in chapter 15.49 RCW, however, any disputes regarding responsibilities for seed clean out are governed exclusively by contracts between the producers of the seed and conditioners or processors of the seed.

(3) "Broker" means any person other than a commission merchant, dealer, or cash buyer who negotiates the purchase or sale of any agricultural product, but no broker may handle the agricultural products involved or proceeds of the sale.

(4) "Cash buyer" means any person other than a commission merchant, dealer, or broker, who obtains from the consignor thereof for the purpose of resale or processing, title, possession, or control of any agricultural product or who contracts for the title, possession, or control of any agricultural product, or who buys or agrees to buy for resale any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product, in coin or currency. However, a cashier's check, certified check, credit card, or bankdraft may be used for the payment. For the purposes of this subsection, "agricultural product," does not include hay, grain, straw, or livestock.

(5) "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a licensed public weighmaster in accordance with the provisions of chapter 15.80 RCW.

(6) "Commission merchant" means any person who receives on consignment for sale or processing and sale from the consignor thereof any agricultural product for sale on commission on behalf of the consignor, or who accepts any farm product in trust from the consignor thereof for the purpose of resale, or who sells or offers for sale on commission any agricultural product, or who in any way handles for the account of or as an agent of the consignor thereof, any agricultural product.

(7) "Conditioner" means any person, firm, company, or other organization that receives seeds from a consignor for drying or cleaning.

(8) "Consignor" means any producer, person, or his or her agent who sells, ships, or delivers to any commission merchant, dealer, cash buyer, or agent, any agricultural product for processing, handling, sale, or resale.

(9) "Date of sale" means the date agricultural products are delivered to the person buying the products.

(10) "Dealer" means any person other than a cash buyer, as defined in subsection (4) of this section, who solicits, con-

tracts for, or obtains from the consignor thereof for reselling or processing, title, possession, or control of any agricultural product, or who buys or agrees to buy any agricultural product from the consignor thereof for sale or processing and includes any person, other than one who acts solely as a producer, who retains title in an agricultural product and delivers it to a producer for further production or increase. For the purposes of this chapter, the term dealer includes any person who purchases livestock on behalf of and for the account of another, or who purchases cattle in another state or country and imports these cattle into this state for resale.

(11) "Director" means the director of agriculture or a duly authorized representative.

(12) "Fixed or established place of business" for the purpose of this chapter means any permanent warehouse, building, or structure, at which necessary and appropriate equipment and fixtures are maintained for properly handling those agricultural products generally dealt in, and at which supplies of the agricultural products being usually transported are stored, offered for sale, sold, delivered, and generally dealt with in quantities reasonably adequate for and usually carried for the requirements of such a business, and that is recognized as a permanent business at such place, and carried on as such in good faith and not for the purpose of evading this chapter, and where specifically designated personnel are available to handle transactions concerning those agricultural products generally dealt in, which personnel are available during designated and appropriate hours to that business, and shall not mean a residence, barn, garage, tent, temporary stand or other temporary quarters, any railway car, or permanent quarters occupied pursuant to any temporary arrangement.

(13) "Licensed public weighmaster" means any person, licensed under the provisions of chapter 15.80 RCW, who weighs, measures, or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure, or count upon which the purchase or sale of any commodity or upon which the basic charge of payment for services rendered is based.

(14) "Licensee" means any person or business licensed under this chapter as a commission merchant, dealer, limited dealer, broker, cash buyer, or agent.

(15) "Limited dealer" means any person who buys, agrees to buy, or pays for the production or increase of any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product and who operates under the alternative bonding provision in RCW 20.01.211.

(16) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(17) "Pooling contract" means any written agreement whereby a consignor delivers a horticultural product to a commission merchant under terms whereby the commission merchant may commingle the consignor's horticultural products for sale with others similarly agreeing, which must include all of the following:

(a) A delivery receipt for the consignor that indicates the variety of horticultural product delivered, the number of containers, or the weight and tare thereof;

(b) Horticultural products received for handling and sale in the fresh market shall be accounted for to the consignor with individual pack-out records that shall include variety, grade, size, and date of delivery. Individual daily packing summaries shall be available within forty-eight hours after packing occurs. However, platform inspection shall be acceptable by mutual contract agreement on small deliveries to determine variety, grade, size, and date of delivery;

(c) Terms under which the commission merchant may use his or her judgment in regard to the sale of the pooled horticultural product;

(d) The charges to be paid by the consignor as filed with the state of Washington;

(e) A provision that the consignor shall be paid for his or her pool contribution when the pool is in the process of being marketed in direct proportion, not less than eighty percent of his or her interest less expenses directly incurred, prior liens, and other advances on the grower's crop unless otherwise mutually agreed upon between grower and commission merchant.

(18) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale.

(19) "Producer" means any person engaged in the business of growing or producing any agricultural product, whether as the owner of the products, or producing the products for others holding the title thereof.

(20) "Proprietary seed" means any seed that is protected under the Federal Plant Variety Protection Act.

(21) "Retail merchant" means any person operating from a bona fide or established place of business selling agricultural products twelve months of each year.

(22) "Seed" means agricultural seed, flower seed, vegetable seed, other crop seed, and seeds, as defined in chapter 15.49 RCW.

(23) "Seed bailment contract" means any contract meeting the requirements of chapter 15.48 RCW.

(24) "Seed clean out" means the process of removing impurities from raw seed product. [2011 c 336 § 568; 2011 c 103 § 39; 2004 c 212 § 1; 2003 c 395 § 1; 1991 c 174 § 1; 1989 c 354 § 37; 1986 c 178 § 6; 1985 c 412 § 8; 1983 c 305 § 1; 1982 c 194 § 1; 1981 c 296 § 30; 1979 ex.s. c 115 § 1; 1977 ex.s. c 304 § 1; 1974 ex.s. c 102 § 2; 1971 ex.s. c 182 § 1; 1967 c 240 § 40; 1963 c 232 § 1; 1959 c 139 § 1.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2011 c 103 § 39 and by 2011 c 336 § 568, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

Additional notes found at www.leg.wa.gov

20.01.020 Rules and regulations—Enforcement of chapter—Interference prohibited. The director, but not his or her duly authorized representative, may adopt such rules

and regulations as are necessary to carry out the purpose of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter, rules and regulations adopted hereunder. No person shall interfere with the director when he or she is performing or carrying out duties imposed on him or her by this chapter, rules and regulations adopted hereunder. [2011 c 336 § 569; 1959 c 139 § 2.]

20.01.030 Exemptions. This chapter does not apply to:

(1) Any cooperative marketing associations or federations incorporated under, or whose articles of incorporation and bylaws are equivalent to, the requirements of chapter 23.86 RCW, except as to that portion of the activities of the association or federation that involve the handling or dealing in the agricultural products of nonmembers of the organization: PROVIDED, That the associations or federations may purchase up to fifteen percent of their gross from nonmembers for the purpose of filling orders: PROVIDED FURTHER, That if the cooperative or association acts as a processor as defined in RCW 20.01.500(2) and markets the processed agricultural crops on behalf of the grower or its own behalf, the association or federation is subject to the provisions of RCW 20.01.500 through 20.01.560 and the license provision of this chapter excluding bonding provisions: PROVIDED FURTHER, That none of the foregoing exemptions in this subsection apply to any such cooperative or federation dealing in or handling grain in any manner, and not licensed under the provisions of chapter 22.09 RCW;

(2) Any person who sells exclusively his or her own agricultural products as the producer thereof;

(3) Any public livestock market operating under a bond required by law or a bond required by the United States to secure the performance of the public livestock market's obligation. However, any such market operating as a livestock dealer or order buyer, or both, is subject to all provisions of this chapter except for the payment of the license fee required in RCW 20.01.040;

(4) Any retail merchant having a bona fide fixed or permanent place of business in this state, but only for the retail merchant's retail business conducted at such fixed or established place of business;

(5) Any person buying farm products for his or her own use or consumption;

(6) Any warehouse operator or grain dealer licensed under the state grain warehouse act, chapter 22.09 RCW, with respect to his or her handling of any agricultural product as defined under that chapter;

(7) Any nurseryman who is required to be licensed under the horticultural laws of the state with respect to his or her operations as such licensee;

(8) Any person licensed under the now existing dairy laws of the state with respect to his or her operations as such licensee;

(9) Any producer who purchases less than fifteen percent of his or her volume to complete orders;

(10) Any person, association, or corporation regulated under chapter 67.16 RCW and the rules adopted thereunder while performing acts regulated by that chapter and the rules adopted thereunder;

(11) Any domestic winery, as defined in RCW 66.04.010, licensed under Title 66 RCW, with respect to its

transactions involving agricultural products used by the domestic winery in making wine. [2011 c 336 § 570; 1993 c 104 § 1. Prior: 1989 c 354 § 38; 1989 c 307 § 37; 1988 c 254 § 10; 1983 c 305 § 2; 1982 c 194 § 2; 1981 c 296 § 31; 1979 ex.s. c 115 § 2; 1977 ex.s. c 304 § 2; 1975 1st ex.s. c 7 § 18; 1971 ex.s. c 182 § 2; 1969 ex.s. c 132 § 1; 1967 c 240 § 41; 1959 c 139 § 3.]

Legislative finding—1989 c 307: See note following RCW 23.86.007. Additional notes found at www.leg.wa.gov

20.01.100 Issuance of license—Expiration date—Fraudulent application grounds for refusal, revocation. The director, upon his or her satisfaction that the applicant has met the requirements of this chapter and rules and regulations adopted hereunder, shall issue a license entitling the applicant to carry on the business described on the application. Such license shall expire on December 31st following the issuance of the license, provided that it has not been revoked or suspended prior thereto, by the director, after due notice and hearing. Fraud and misrepresentation in making an application for a license shall be cause for refusal to grant a license or revocation of license granted pursuant to a fraudulent application after due notice and hearing. [2011 c 336 § 571; 1959 c 139 § 10.]

20.01.110 Publication of list of licensees and rules—Posting license. The director may publish a list, as often as he or she deems necessary, of all persons licensed under this chapter together with all the necessary rules and regulations concerning the enforcement of this chapter. Each person licensed under the provisions of this chapter shall post his or her license or a copy thereof in his or her place or places of business in plain view of the public. [2011 c 336 § 572; 1959 c 139 § 11.]

20.01.120 Vehicle license plates. The licensee shall prominently display license plates issued by the director on the front and back of any vehicle used by the licensee to transport upon public highways unprocessed agricultural products which he or she has not produced as a producer of such agricultural products. If the licensee operates more than one vehicle to transport unprocessed agricultural products on public highways he or she shall apply to the director for license plates for each such additional vehicle. Such additional license plates shall be issued to the licensee at the actual cost to the department for such license plates and necessary handling charges. Such license plates are not transferable to any other person and may be used only on the licensee's vehicle or vehicles. The display of such license plates on the vehicle or vehicles of a person whose license has been revoked, or the failure to surrender such license plates forthwith to the department after such revocation, shall be deemed a violation of this chapter. [2011 c 336 § 573; 1959 c 139 § 12.]

20.01.150 Denial, suspension, revocation of licenses, probationary orders—Authority. The director is authorized to deny, suspend, or revoke a license or issue conditional or probationary orders in the manner prescribed herein, in any case in which he or she finds that there has been a fail-

ure and/or refusal to comply with the requirements of this chapter, rules or regulations adopted hereunder. [2011 c 336 § 574; 1959 c 139 § 15.]

20.01.170 Denial, suspension, revocation of licenses, probationary orders—Subpoenas, witnesses, testimony, fees. The director may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents, anywhere in the state. The licensee or applicant shall have opportunity to make his or her defense, and may have such subpoenas issued as he or she desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. Testimony shall be recorded and may be taken by deposition under such rules as the director may prescribe. Witnesses, except complaining witnesses, shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW, as enacted or hereafter amended. [2011 c 336 § 575; 1963 c 232 § 2; 1959 c 139 § 17.]

20.01.180 Denial, suspension, revocation of licenses, probationary orders—Findings and conclusions—Record. The director shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in his or her office, together with a record of all of the evidence, and serve upon the accused a copy of such findings and conclusions. [2011 c 336 § 576; 1959 c 139 § 18.]

20.01.190 Denial, suspension, revocation of licenses, probationary orders—Final action in writing—Appeal to superior court. The revocation, suspension or denial of a license, or the issuance of conditional or probationary orders, shall be in writing signed by the director, stating the grounds upon which such order is based and the aggrieved person shall have the right to appeal from such order within fifteen days after a copy thereof is served upon him or her, to the superior court of Thurston county or the county in which the hearing was held. A copy of such findings shall be mailed to the licensee's surety. In such appeal the entire record shall be certified by the director to the court, and the review on appeal shall be confined to the evidence adduced at the hearing before the director. [2011 c 336 § 577; 1959 c 139 § 19.]

20.01.205 License suspension—Noncompliance with support order—Reissuance. The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2011 c 103 § 22; 1997 c 58 § 855.]

Purpose—2011 c 103: See note following RCW 15.26.120.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

20.01.212 Livestock dealers bonded under federal law. If an applicant for a commission merchant's and/or dealer's license is bonded as a livestock dealer or packer under the provisions of the packers and stockyards act of 1921 (7 U.S.C. 181), as amended, on June 13, 1963, and acts as a commission merchant, packer, and/or a dealer only in livestock as defined in said packers and stockyards act of 1921 (7 U.S.C. 181), the director may accept such bond in lieu of the bond required in RCW 20.01.210 as good and sufficient and issue the applicant a license limited solely to dealing in livestock. A dealer buying and selling livestock who has furnished a bond as required by the packers and stockyards administration to cover acting as order buyer as well as dealer may also act as an order buyer for others under the provisions of this chapter, and all persons who act as order buyers of livestock shall license under this chapter as a livestock dealer: PROVIDED, That the applicant shall furnish the director with a bond approved by the United States secretary of agriculture. Such bond shall be in a minimum amount of ten thousand dollars. It shall be a violation for the licensee to act as a commission merchant and/or dealer in any other agricultural commodity without first having notified the director and furnishing him or her with a bond as required under the provisions of RCW 20.01.210, and failure to furnish the director with such bond shall be cause for the immediate suspension of the licensee's license, and revocation subject to a hearing. [2011 c 336 § 578; 1991 c 109 § 19; 1977 ex.s. c 304 § 7; 1971 ex.s. c 182 § 9; 1963 c 232 § 6.]

20.01.240 Claims against commission merchant, dealer. (1) Any consignor who believes he or she has a valid claim against the bond of a commission merchant or dealer shall file a claim with the director.

(2) In the case of a claim against the bond of a commission merchant or dealer in hay or straw, default occurs when the licensee fails to make payment within thirty days of the date the licensee took possession of the hay or straw or at a date agreed to by both the consignor and commission merchant or dealer in written contract. In the case of a claim against a limited dealer in hay or straw, default occurs when the licensee fails to make payment upon taking possession of the hay or straw.

(3) Upon the filing of a claim under this subsection against any commission merchant or dealer handling any agricultural product, the director may, after investigation, proceed to ascertain the names and addresses of all consignor creditors of such commission merchant and dealer, together with the amounts due and owing to them by such commission merchant and dealer, and shall request all such consignor creditors to file a verified statement of their respective claims with the director. Such request shall be addressed to each known consignor creditor at his or her last known address.

(4) For claims against a bond that have been filed by consignors prior to the sixty-day deadline established in RCW 20.01.250, the director shall investigate the claims and, within thirty days of verifying the claims, demand payment for the valid claims by the licensee's surety. The director shall distribute the proceeds of the valid bond claims to the claimants on a pro rata basis within the limits of the claims and the availability of the bond proceeds. If a claim is filed after the sixty-day deadline established in RCW 20.01.250,

the director may investigate the claim and may demand payment for a valid claim. The director shall distribute the proceeds of any such payment made by the surety to the claimant on a first-to-file, first-to-be-paid basis within the limits of the claim and the availability of any bond proceeds remaining after the pro rata distribution. All distributions made by the director under this subsection are subject to RCW 20.01.260. [2011 c 336 § 579; 2003 c 395 § 5; 1986 c 178 § 12; 1959 c 139 § 24.]

20.01.250 Failure of consignor to file claim, time limitation. If a consignor creditor so addressed fails, refuses or neglects to file in the office of the director his or her verified claim as requested by the director within sixty days from the date of such request, the director shall thereupon be relieved of further duty or action hereunder on behalf of said consignor creditor. [2011 c 336 § 580; 1959 c 139 § 25.]

20.01.260 Director not liable if circumstances prevent ascertainment of creditors—Demand on bond. Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all said consignor creditors, the director after exerting due diligence and making reasonable inquiry to secure said information from all reasonable and available sources, may make demand on said bond on the basis of information then in his or her possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subsequently appear or be discovered. [2011 c 336 § 581; 1959 c 139 § 26.]

20.01.280 Action on bond after refusal to pay—New bond, failure to file. Upon the refusal of the surety company to pay the demand the director may thereupon bring an action on the bond in behalf of said consignor creditors. Upon any action being commenced on said bond the director may require the filing of a new bond and immediately upon the recovery in any action on such bond such commission merchant and/or dealer shall file a new bond and upon failure to file the same within ten days in either case such failure shall constitute grounds for the suspension or revocation of his or her license. [2011 c 336 § 582; 1959 c 139 § 28.]

20.01.310 Oaths, testimony, witnesses, subpoenas—Contempt proceedings—Records as evidence. The director or his or her authorized agents are empowered to administer oaths of verification on said complaints. He or she shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas in the manner prescribed in RCW 20.01.170 requiring attendance of witnesses before him or her, together with all books, memoranda, papers, and other documents, articles, or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation, and all parties disobeying the orders or subpoenas of said director shall be guilty of contempt and shall be certified to the superior court of the state for punishment for such contempt. Copies of records, audits and reports of audits, inspection certificates, certified reports, findings, and all papers on file in the office of the director shall be prima facie evidence of the matters therein con-

tained, and may be admitted into evidence in any hearing provided in this chapter. [2011 c 336 § 583; 1959 c 139 § 31.]

20.01.330 Denial, revocation, suspension, or condition of licenses, probationary orders—Grounds. The director may refuse to grant a license or renew a license and may revoke or suspend a license or issue a conditional or probationary order if he or she is satisfied after a hearing, as herein provided, of the existence of any of the following facts, which are hereby declared to be a violation of this chapter:

(1) That fraudulent charges or returns have been made by the applicant, or licensee, for the handling, sale or storage of, or for rendering of any service in connection with the handling, sale or storage of any agricultural product.

(2) That the applicant, or licensee, has failed or refused to render a true account of sales, or to make a settlement thereon, or to pay for agricultural products received, within the time and in the manner required by this chapter.

(3) That the applicant, or licensee, has made any false statement as to the condition, quality, or quantity of agricultural products received, handled, sold, or stored by him or her.

(4) That the applicant, or licensee, directly or indirectly has purchased for his or her own account agricultural products received by him or her upon consignment without prior authority from the consignor together with the price fixed by consignor or without promptly notifying the consignor of such purchase. This shall not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of agricultural products remaining unsold, if such commission merchant shall forthwith enter such transaction on his or her account of sales.

(5) That the applicant, or licensee, has intentionally made any false or misleading statement as to the conditions of the market for any agricultural products.

(6) That the applicant, or licensee, has made fictitious sales or has been guilty of collusion to defraud the consignor.

(7) That a commission merchant to whom any consignment is made has reconsigned such consignment to another commission merchant and has received, collected, or charged by such means more than one commission for making the sale thereof, for the consignor, unless by written consent of such consignor.

(8) That the licensee was guilty of fraud or deception in the procurement of such license.

(9) That the licensee or applicant has failed or refused to file with the director a schedule of his or her charges for services in connection with agricultural products handled on account of or as an agent of another, or that the applicant, or licensee, has indulged in any unfair practice.

(10) That the licensee has rejected, without reasonable cause, or has failed or refused to accept, without reasonable cause, any agricultural product bought or contracted to be bought from a consignor by such licensee; or failed or refused, without reasonable cause, to furnish or provide boxes or other containers, or hauling, harvesting, or any other service contracted to be done by licensee in connection with the acceptance, harvesting, or other handling of said agricultural products bought or handled or contracted to be bought

or handled; or has used any other device to avoid acceptance or unreasonably to defer acceptance of agricultural products bought or handled or contracted to be bought or handled.

(11) That the licensee has otherwise violated any provision of this chapter and/or rules and regulations adopted hereunder.

(12) That the licensee has knowingly employed an agent, as defined in this chapter, without causing said agent to comply with the licensing requirements of this chapter applicable to agents.

(13) That the applicant or licensee has, in the handling of any agricultural products, been guilty of fraud, deceit, or negligence.

(14) That the licensee has failed or refused, upon demand, to permit the director or his or her agents to make the investigations, examination, or audits, as provided in this chapter, or that the licensee has removed or sequestered any books, records, or papers necessary to any such investigations, examination, or audits, or has otherwise obstructed the same.

(15) That the licensee, without reasonable cause, has failed or refused to execute or carry out a lawful contract with a consignor.

(16) That the licensee has failed or refused to keep and maintain the records as required by this chapter and/or rules and regulations adopted hereunder.

(17) That the licensee has attempted payment by a check the licensee knows not to be backed by sufficient funds to cover such check.

(18) That the licensee has been guilty of fraud or deception in his or her dealings with purchasers including misrepresentation of goods as to grade, quality, weights, quantity, or any other essential fact in connection therewith.

(19) That the licensee has permitted a person to in fact operate his or her own separate business under cover of the licensee's license and bond.

(20) That a commission merchant or dealer has failed to furnish additional bond coverage within fifteen days of when it was requested in writing by the director.

(21) That the licensee has discriminated in the licensee's dealings with consignors on the basis of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap. [2011 c 336 § 584; 1989 c 354 § 40; 1982 c 20 § 1; 1981 c 296 § 32; 1977 ex.s. c 304 § 8; 1971 ex.s. c 182 § 11; 1959 c 139 § 33.]

Additional notes found at www.leg.wa.gov

20.01.340 Denial, revocation, suspension of licenses, probationary orders—Previous violations as grounds. Previous violation by the applicant or licensee, or by any person connected with him or her, of any of the provisions of this chapter and/or rules and regulations adopted hereunder, shall be good and sufficient ground for denial, suspension or revocation of a license, or the issuance of a conditional or probationary order. [2011 c 336 § 585; 1959 c 139 § 34.]

20.01.350 Denial, revocation, suspension of licenses, probationary orders—Hearing, investigation—Findings required—Notices. The director, after hearing or investigation, may refuse to grant a license or renewal thereof and may

revoke or suspend any license or issue a conditional or probatory order, as the case may require, when he or she is satisfied that the licensee has executory or executed contracts for the purchase of agricultural products, or for the handling of agricultural products on consignment.

In such cases, if the director is satisfied that to permit the dealer or commission merchant to continue to purchase or to receive further shipments or deliveries of agricultural products would be likely to cause serious and irreparable loss to said consignor-creditors, or to consignors with whom the said dealer or commission merchant has said contracts, then the director within his or her discretion may thereupon and forthwith shorten the time herein provided for hearing upon an order to show cause why the license of said dealer or commission merchant should not be forthwith suspended, or revoked: PROVIDED, That the time of notice of said hearing, shall in no event be less than twenty-four hours, and the director shall, within that period, call a hearing at which the dealer or commission merchant proceeded against shall be ordered to show cause why the license should not be suspended, or revoked, or continued under such conditions and provisions, if any, as the director may consider just and proper and for the protection of the best interests of the producer-creditors involved. Said hearing, in the case of such emergency, may be called upon written notice, said notice to be served personally or by mail on the dealer or commission merchant involved, and may be held at the nearest office of the director or at such place as may be most convenient at the discretion of the director, for the attendance of all parties involved. [2011 c 336 § 586; 1959 c 139 § 35.]

20.01.390 When dealer must pay for products delivered to him or her. (1) Every dealer must pay for agricultural products, except livestock, delivered to him or her at the time and in the manner specified in the contract with the producer, but if no time is set by such contract, or at the time of said delivery, then within thirty days from the delivery or taking possession of such agricultural products.

(2) Every dealer must pay for livestock delivered to him or her at the time and in the manner specified in the contract, but if no time is set by such contract, or at the time of said delivery, then within seven days from the delivery or taking possession of such livestock. Where payment for livestock is made by mail, payment is timely if mailed within seven days of the date of sale. [2011 c 336 § 587; 1982 c 20 § 2; 1959 c 139 § 39.]

20.01.440 Commission merchant's copy of records to be retained—Inspection—Department's certificate of condition, quality, etc. Every commission merchant shall retain a copy of all records covering each transaction for a period of three years from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the director and the consignor, or authorized representative of either. In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity, or weight of any lot, shipment, or consignment of agricultural products, the department shall furnish, upon the payment of a reasonable fee therefor by the request-

ing party, a certificate establishing the condition, quality, grade, pack, quantity, or weight of such lot, shipment, or consignment. Such certificate shall be prima facie evidence in all courts of this state as to the recitals thereof. The burden of proof shall be upon the commission merchant to prove the correctness of his or her accounting as to any transaction which may be questioned. [2011 c 336 § 588; 1991 c 109 § 23; 1959 c 139 § 44.]

20.01.475 Licensee under chapter—Prima facie evidence acting as licensee handling agricultural products. It shall be prima facie evidence that a licensee licensed under the provisions of this chapter is acting as such in the handling of any agricultural product. [2011 c 103 § 40; 1971 ex.s. c 182 § 13; 1967 c 240 § 43.]

Purpose—2011 c 103: See note following RCW 15.26.120.

20.01.510 Processor's form showing maximum processing capacity. In order to carry out the purposes of this chapter, the director may require a processor to annually complete a form prescribed by the director, which, when completed, will show the maximum processing capacity of each plant operated by the processor in the state of Washington. Such completed form shall be returned to the director by a date prescribed by him or her. [2011 c 336 § 589; 2011 c 103 § 41; 1971 ex.s. c 182 § 16.]

Reviser's note: This section was amended by 2011 c 103 § 41 and by 2011 c 336 § 589, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—2011 c 103: See note following RCW 15.26.120.

20.01.520 Processor to have grower contracts and commitments on file. By a date or dates prescribed prior to planting time by the director, the director, in order to carry out the purposes of this chapter, may require a processor to have filed with the director:

(1) A copy of each contract the processor has entered into with a grower for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season; and

(2) A notice of each oral commitment the processor has given to growers for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season, and such notice shall disclose the amount of acres and/or quantity to which the processor has committed himself or herself. [2011 c 103 § 42; 1971 ex.s. c 182 § 17.]

Purpose—2011 c 103: See note following RCW 15.26.120.

20.01.530 Grower may file form showing crops processor is committed to purchase. Any grower may file with the director on a form prescribed by him or her the acres of crops and/or quantity of crops to be harvested during the present or next growing season, which he or she understands a processor has orally committed himself or herself to purchase. [2011 c 336 § 591; 1971 ex.s. c 182 § 18.]

20.01.540 Committing to purchase more crops than plants can process—Violation. Any processor who, from the information filed with the director, appears to or has com-

mitted himself or herself either orally or in writing to purchase more crops than his or her plants are capable of processing shall be in violation of this chapter and his or her dealer's license subject to denial, suspension, or revocation as provided for in RCW 20.01.330. [2011 c 336 § 592; 1971 ex.s. c 182 § 19.]

20.01.550 Discrimination by processor. Any processor who discriminates between growers with whom he or she contracts as to price, conditions for production, harvesting, and delivery of crops which is not supportable by economic cost factors shall be in violation of this chapter and the director may subsequent to a hearing deny, suspend, or revoke such processor's license to act as a dealer. [2011 c 336 § 593; 1977 ex.s. c 304 § 15; 1971 ex.s. c 182 § 20.]

Title 21

SECURITIES AND INVESTMENTS

Chapters

21.20 Securities act of Washington.

21.30 Commodity transactions.

Chapter 21.20 RCW

SECURITIES ACT OF WASHINGTON

Sections

21.20.005	Definitions.
21.20.050	Application for registration—Filing of documents—Consent to service of process—Fee.
21.20.377	Subpoena authority—Application—Contents—Notice—Fees.
21.20.520	Copies of entries, documents to be furnished—Copies as prima facie evidence.

21.20.005 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

(1) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account. "Broker-dealer" does not include (a) a salesperson, issuer, bank, savings institution, or trust company, (b) a person who has no place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (c) a person who has no place of business in this state if during any period of twelve consecutive months that person does not direct more than fifteen offers to sell or to buy into or make more than five sales in this state in any manner to persons other than those specified in (b) of this subsection.

(2) "Customer" means a person other than a broker-dealer or investment adviser.

(3) "Director" means the director of financial institutions of this state.

(4) "Federal covered adviser" means any person registered as an investment adviser under section 203 of the investment advisers act of 1940.

(5) "Federal covered security" means any security defined as a covered security in the securities act of 1933.

(6) "Full business day" means all calendar days, excluding therefrom Saturdays, Sundays, and all legal holidays, as defined by statute.

(7) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(8) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, (a) provide the foregoing investment advisory services to others for compensation as part of a business or (b) hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser shall also include any person who holds himself or herself out as a financial planner.

"Investment adviser" does not include (a) a bank, savings institution, or trust company, (b) a lawyer, accountant, certified public accountant licensed under chapter 18.04 RCW, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (c) a broker-dealer or its salesperson whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them, (d) a publisher of any bona fide newspaper, news magazine, news column, newsletter, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client, (e) a radio or television station, (f) a person whose advice, analyses, or reports relate only to securities exempted by RCW 21.20.310(1), (g) an investment adviser representative, or (h) such other persons not within the intent of this paragraph as the director may by rule or order designate.

(9) "Investment adviser representative" means any partner, officer, director, or a person occupying similar status or performing similar functions, or other individual, who is employed by or associated with an investment adviser, and who does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities;

(b) Manages accounts or portfolios of clients;

(c) Determines which recommendation or advice regarding securities should be given;

(d) Solicits, offers, or negotiates for the sale of or sells investment advisory services; or

(e) Supervises employees who perform any of the functions under (a) through (d) of this subsection.

(10) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certifi-

cates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type; the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(11) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(12) "Person" means an individual, a corporation, a partnership, a limited liability company, a limited liability partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(13) "Relatives," as used in RCW 21.20.310(11) includes:

- (a) A member's spouse;
- (b) Parents of the member or the member's spouse;
- (c) Grandparents of the member or the member's spouse;
- (d) Natural or adopted children of the member or the member's spouse;
- (e) Aunts and uncles of the member or the member's spouse; and
- (f) First cousins of the member or the member's spouse.

(14) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(15) "Salesperson" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. "Salesperson" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by RCW 21.20.310 (1), (2), (3), (4), (9), (10), (11), (12), or (13), (b) effecting transactions exempted by RCW 21.20.320 unless otherwise expressly required by the terms of the exemption, or (c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(16) "Securities act of 1933," "securities exchange act of 1934," "public utility holding company act of 1935," "investment company act of 1940," and "investment advisers act of 1940" means the federal statutes of those names as amended before or after June 10, 1959.

(17)(a) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of

interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; investment of money or other consideration in the risk capital of a venture with the expectation of some valuable benefit to the investor where the investor does not receive the right to exercise practical and actual control over the managerial decisions of the venture; voting-trust certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or mineral lease or in payments out of production under a lease, right, or royalty; charitable gift annuity; any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof; or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any security under this subsection. This subsection applies whether or not the security is evidenced by a written document.

(b) "Security" does not include: (i) Any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period; or (ii) an interest in a contributory or noncontributory pension or welfare plan subject to the employee retirement income security act of 1974.

(18) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico. [2011 c 336 § 594; 2002 c 65 § 1; 1998 c 15 § 1; 1994 c 256 § 3. Prior: 1993 c 472 § 14; 1993 c 470 § 4; 1989 c 391 § 1; 1979 ex.s. c 68 § 1; 1979 c 130 § 3; 1977 ex.s. c 188 § 1; 1975 1st ex.s. c 84 § 1; 1967 c 199 § 1; 1961 c 37 § 1; 1959 c 282 § 60.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

21.20.050 Application for registration—Filing of documents—Consent to service of process—Fee. (1) A broker-dealer, salesperson, investment adviser, or investment adviser representative may apply for registration by filing with the director or his or her authorized agent an application together with a consent to service of process in such form as the director shall prescribe and payment of the fee prescribed in RCW 21.20.340.

(2) A federal covered adviser shall file such documents as the director may, by rule or otherwise, require together with a consent to service of process and the payment of the fee prescribed in RCW 21.20.340. [2011 c 336 § 595; 1998 c 15 § 4; 1994 c 256 § 6; 1981 c 272 § 1; 1979 ex.s. c 68 § 3; 1975 1st ex.s. c 84 § 3; 1961 c 37 § 2; 1959 c 282 § 5.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.377 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approv-

ing and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 7.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

21.20.520 Copies of entries, documents to be furnished—Copies as prima facie evidence. Upon request and at such reasonable charges as the director prescribes, the director shall furnish to any person photostatic or other copies (certified under his or her seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified. [2011 c 336 § 596; 1979 ex.s. c 68 § 37; 1959 c 282 § 52.]

Chapter 21.30 RCW

COMMODITY TRANSACTIONS

Sections

- 21.30.090 When publications or electronic communications not deemed offers to sell or buy in this state.
- 21.30.107 Subpoena authority—Application—Contents—Notice—Fees.

21.30.090 When publications or electronic communications not deemed offers to sell or buy in this state. (1) For the purpose of RCW 21.30.080, an offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his or her behalf in this state in any bona fide newspaper or other publication of general, regular, and paid circulation, which is not published in this state, an offer to sell or to buy that is reasonably calculated to solicit only persons outside this state and not to solicit persons in this state.

(2) For the purpose of RCW 21.30.080, an offer to sell or to buy is not made in this state when a radio or television program or other electronic communication originating outside this state is received in this state and the offer to sell or to buy is reasonably calculated to solicit only persons outside this

state and not to solicit persons in this state. [2011 c 336 § 597; 1986 c 14 § 9.]

21.30.107 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 8.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

Title 22

WAREHOUSING AND DEPOSITS

Chapters

- 22.09 Agricultural commodities.
- 22.28 Safe deposit companies.
- 22.32 General penalties.

Chapter 22.09 RCW

AGRICULTURAL COMMODITIES

Sections

- 22.09.011 Definitions.
- 22.09.020 Department authority—Rules.
- 22.09.040 Application for warehouse license.
- 22.09.045 Application for grain dealer license.
- 22.09.050 Warehouse license fees—Penalty.
- 22.09.055 Grain dealer—Exempt grain dealers—License fees—Penalty.
- 22.09.090 Bond requisites—Certificate of deposit or other security—Additional security—Suspension of license for failure to maintain.
- 22.09.100 Bonds—Duration—Release of surety—Cancellation by surety.
- 22.09.110 Casualty insurance required—Certificate to be filed.
- 22.09.130 Rights and duties of warehouse operator—Duty to serve—Receipts—Special binning—Unsuitable commodities—Put through commodities.
- 22.09.140 Rights and duties of licensees—Partial withdrawal—Adjustment or substitution of receipt—Liability to third parties.

22.09.150	Rights and duties of warehouse operator—Delivery of stored commodities—Damages.
22.09.160	Rights and duties of licensees—Disposition of hazardous commodities.
22.09.170	Rights and duties of warehouse operator—Special disposition of commodities under written order.
22.09.175	Presumptions regarding commodities—Approval of contracts.
22.09.180	Rights and duties of licensees—Records, contents—Itemized charges.
22.09.190	Rights and duties of warehouse operator—Rebates, preferences, etc., prohibited.
22.09.230	Rights and duties of warehouse licensees—Signs—Use of "Washington Bonded Warehouse."
22.09.240	Rights and duties of warehouse operator—Schedule of rates—Posting—Revision.
22.09.250	Rights and duties of warehouse operator—Unlawful practices.
22.09.260	Deposit of commodities unfit for human consumption—Notice.
22.09.290	Warehouse receipts—Required terms.
22.09.300	Warehouse receipts—Forms, numbering, printing, bond—Compliance with Article 7 of Title 62A RCW—Confiscation.
22.09.320	Warehouse receipts—Lost or destroyed receipts.
22.09.340	Examination of receipts and commodities—Request—Fee—Access to bins—Records and accounts—Out-of-state offices.
22.09.345	Inspections—Notice, when issued—Failure to comply, penalty—Court order—Costs, expenses, attorneys' fees.
22.09.350	Remedies of department on discovery of shortage.
22.09.361	Seizure of commodities or warehouse operator's records—Department duties—Warehouse operator's remedies—Expenses and attorneys' fees.
22.09.371	Depositor's lien.
22.09.381	Depositors' claims, processing by department.
22.09.391	Depositor's lien—Liquidation procedure.
22.09.416	Grain indemnity fund program—Assessments.
22.09.436	Grain indemnity fund program—Advisory committee.
22.09.441	Grain indemnity fund program—Processing of claims.
22.09.446	Grain indemnity fund program—Failure to file claim in time.
22.09.451	Grain indemnity fund program—Payment limitations.
22.09.466	Grain indemnity fund program—Debt and obligation of grain dealer or warehouse operator—Recovery by director.
22.09.471	Grain indemnity fund program—Proceedings against licensee.
22.09.570	Action on bond by director—Authorized—Grounds.
22.09.580	Action on bond by director—Failure of depositor creditor to file claim upon request—Effect.
22.09.590	Action on bond by director—Records as to depositor creditors missing or information incomplete—Effect.
22.09.600	Action on bond by director—Powers of director.
22.09.610	Action on bond by director—When authorized—New bond, when required—Penalty for failure to file.
22.09.615	Action by depositor upon licensee's bond.
22.09.620	Payment for agricultural commodities purchased—Time requirements.
22.09.660	Emergency storage situation—Forwarding to other warehouses.
22.09.780	Inspection or grading of commodities.
22.09.790	Inspection or grading of commodities—Fees and charges.
22.09.800	Inspection or grading of commodities—Scales and weighing.
22.09.810	Inspection or grading of commodities—Inspection of commodities shipped to or from places other than inspection points.
22.09.820	Inspection or grading of commodities—Unloading commodity without inspection or weighing.
22.09.860	Police protection of terminal yards and tracks.

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

(1) "Agricultural commodities," or "commodities," means: (a) Grains for which inspection standards have been established under the United States grain standards act; (b) pulses and similar commodities for which inspection standards have been established under the agricultural marketing act of 1946; and (c) other similar agricultural products for which inspection standards have been established or which have been otherwise designated by the department by rule for inspection services or the warehousing requirements of this chapter.

(2) "Appeal inspection" means, for commodities covered by federal standards, a review of original inspection or reinspection results by an authorized United States department of agriculture inspector. For commodities covered under state standards, an appeal inspection means a review of original or reinspection results by a supervising inspector. An appeal inspection may be performed either on the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact.

(3) "Conditioning" means, but is not limited to, the drying or cleaning of agricultural commodities.

(4) "Deferred price contract" means a contract for the sale of commodities that conveys the title and all rights of ownership to the commodities represented by the contract to the buyer, but allows the seller to set the price of the commodities at a later date based on an agreed upon relationship to a future month's price or some other mutually agreeable method of price determination. Deferred price contracts include but are not limited to those contracts commonly referred to as delayed price, price later contracts, or open price contracts.

(5) "Department" means the department of agriculture of the state of Washington.

(6) "Depositor" means (a) any person who deposits a commodity with a Washington state licensed warehouse operator for storage, handling, conditioning, or shipment, or (b) any person who is the owner or legal holder of a warehouse receipt, outstanding scale weight ticket, or other evidence of the deposit of a commodity with a Washington state licensed warehouse operator or (c) any producer whose agricultural commodity has been sold to a grain dealer through the dealer's place of business located in the state of Washington, or any Washington producer whose agricultural commodity has been sold to or is under the control of a grain dealer, whose place of business is located outside the state of Washington.

(7) "Director" means the director of the department or his or her duly authorized representative.

(8) "Exempt grain dealer" means a grain dealer who purchases less than one hundred thousand dollars of covered commodities annually from producers, and operates under the provisions of RCW 22.09.060.

(9) "Failure" means:

- (a) An inability to financially satisfy claimants in accordance with this chapter and the time limits provided for in it;
- (b) A public declaration of insolvency;
- (c) A revocation of license and the leaving of an outstanding indebtedness to a depositor;

(d) A failure to redeliver any commodity to a depositor or to pay depositors for commodities purchased by a licensee in the ordinary course of business and where a bona fide dispute does not exist between the licensee and the depositor;

(e) A failure to make application for license renewal within sixty days after the annual license renewal date; or

(f) A denial of the application for a license renewal.

(10) "Grain dealer" means any person who, through his or her place of business located in the state of Washington, solicits, contracts for, or obtains from a producer, title, possession, or control of any agricultural commodity for purposes of resale, or any person who solicits, contracts for, or

obtains from a Washington producer, title, possession, or control of any agricultural commodity for purposes of resale.

(11) "Historical depositor" means any person who in the normal course of business operations has consistently made deposits in the same warehouse of commodities produced on the same land. In addition the purchaser, lessee, and/or inheritor of such land from the original historical depositor with reference to the land shall be considered a historical depositor with regard to the commodities produced on the land.

(12) "Inspection point" means a city, town, or other place wherein the department maintains inspection and weighing facilities.

(13) "Original inspection" means an initial, official inspection of a grain or commodity.

(14) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.

(15) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in and is entitled to receive all or any part of the proceeds from the sale of a commodity produced on that land.

(16) "Put through" means agricultural commodities that are deposited in a warehouse for receiving, handling, conditioning, or shipping, and on which the depositor has concluded satisfactory arrangements with the warehouse operator for the immediate or impending shipment of the commodity.

(17) "Reinspection" means an official review of the results of an original inspection service by an inspection office that performed that original inspection service. A reinspection may be performed either on the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact.

(18) "Scale weight ticket" means a load slip or other evidence of deposit, serially numbered, not including warehouse receipts as defined in subsection (25) of this section, given a depositor on request upon initial delivery of the commodity to the warehouse and showing the warehouse's name and state number, type of commodity, weight thereof, name of depositor, and the date delivered.

(19) "Shortage" means that a warehouse operator does not have in his or her possession sufficient commodities at each of his or her stations to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him or her for the station.

(20) "Station" means two or more warehouses between which commodities are commonly transferred in the ordinary course of business and that are (a) immediately adjacent to each other, or (b) located within the corporate limits of any city or town and subject to the same transportation tariff zone, or (c) at any railroad siding or switching area and subject to the same transportation tariff zone, or (d) at one location in the open country off rail, or (e) in any area that can be reasonably audited by the department as a station under this chapter and that has been established as such by the director by rule adopted under chapter 34.05 RCW, or (f) within twenty miles of each other but separated by the border between Washington and Idaho or Oregon when the books

and records for the station are maintained at the warehouse located in Washington.

(21) "Subterminal warehouse" means any warehouse that performs an intermediate function in which agricultural commodities are customarily received from dealers rather than producers and where the commodities are accumulated before shipment to a terminal warehouse.

(22) "Terminal warehouse" means any warehouse designated as a terminal by the department, and located at an inspection point where inspection facilities are maintained by the department and where commodities are ordinarily received and shipped by common carrier.

(23) "Warehouse," also referred to as a public warehouse, means any elevator, mill, subterminal grain warehouse, terminal warehouse, country warehouse, or other structure or enclosure located in this state that is used or useable for the storage of agricultural products, and in which commodities are received from the public for storage, handling, conditioning, or shipment for compensation. The term does not include any warehouse storing or handling fresh fruits and/or vegetables, any warehouse used exclusively for cold storage, or any warehouse that conditions yearly less than three hundred tons of an agricultural commodity for compensation.

(24) "Warehouse operator" means any person owning, operating, or controlling a warehouse in the state of Washington.

(25) "Warehouse receipt" means a negotiable or nonnegotiable warehouse receipt as provided for in Article 7 of Title 62A RCW. [2011 c 336 § 598; 1994 c 46 § 3; 1989 c 354 § 44; 1988 c 254 § 11; 1987 c 393 § 19; 1983 c 305 § 16.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Additional notes found at www.leg.wa.gov

22.09.020 Department authority—Rules. The department shall administer and carry out the provisions of this chapter and rules adopted hereunder, and it has the power and authority to:

(1) Supervise the receiving, handling, conditioning, weighing, storage, and shipping of all commodities;

(2) Supervise the inspection and grading of commodities;

(3) Approve or disapprove the facilities, including scales, of all warehouses;

(4) Approve or disapprove all rates and charges for the handling, storage, and shipment of all commodities;

(5) Investigate all complaints of fraud in the operation of any warehouse;

(6) Examine, inspect, and audit, during ordinary business hours, any warehouse licensed under this chapter, including all commodities therein and examine, inspect, audit, or record all books, documents, and records;

(7) Examine, inspect, and audit during ordinary business hours, all books, documents, and records, and examine, inspect, audit, or record records of any grain dealer licensed hereunder at the grain dealer's principal office or headquarters;

(8) Inspect at reasonable times any warehouse or storage facility where commodities are received, handled, conditioned, stored, or shipped, including all commodities stored

therein and all books, documents, and records in order to determine whether or not such facility should be licensed pursuant to this chapter;

(9) Inspect at reasonable times any grain dealer's books, documents, and records in order to determine whether or not the grain dealer should be licensed under this chapter;

(10) Administer oaths and issue subpoenas to compel the attendance of witnesses, and/or the production of books, documents, and records anywhere in the state pursuant to a hearing relative to the purpose and provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided in chapter 2.40 RCW;

(11) Adopt rules establishing inspection standards and procedures for grains and commodities;

(12) Adopt rules regarding the identification of commodities by the use of confetti or other similar means so that such commodities may be readily identified if stolen or removed in violation of the provisions of this chapter from a warehouse or if otherwise unlawfully transported;

(13) Adopt all the necessary rules for carrying out the purpose and provisions of this chapter. The adoption of rules under the provisions of this chapter shall be subject to the provisions of chapter 34.05 RCW, the Administrative Procedure Act. When adopting rules in respect to the provisions of this chapter, the director shall hold a public hearing and shall to the best of his or her ability consult with persons and organizations or interests who will be affected thereby, and any final rule adopted as a result of the hearing shall be designed to promote the provisions of this chapter and shall be reasonable and necessary and based upon needs and conditions of the industry, and shall be for the purpose of promoting the well-being of the industry to be regulated and the general welfare of the people of the state. [2011 c 336 § 599; 1989 c 354 § 45; 1983 c 305 § 17; 1963 c 124 § 2.]

Additional notes found at www.leg.wa.gov

22.09.040 Application for warehouse license. Application for a license to operate a warehouse under the provisions of this chapter shall be on a form prescribed by the department and shall include:

(1) The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation, or other entity;

(2) The full name of each member of the firm or partnership, or the names of the officers of the company, society, cooperative association, or corporation;

(3) The principal business address of the applicant in the state and elsewhere;

(4) The name or names of the person or persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant;

(5) Whether the applicant has also applied for or has been issued a grain dealer license under the provisions of this chapter;

(6) The location of each warehouse the applicant intends to operate and the location of the headquarters or main office of the applicant;

(7) The bushel storage capacity of each such warehouse to be licensed;

(8) The schedule of fees to be charged at each warehouse for the handling, conditioning, storage, and shipment of all commodities during the licensing period;

(9) A financial statement to determine the net worth of the applicant to determine whether or not the applicant meets the minimum net worth requirements established by the director pursuant to chapter 34.05 RCW. All financial statement information required by this subsection shall be confidential information not subject to public disclosure;

(10) Whether the application is for a terminal, subterminal, or country warehouse license;

(11) Whether the applicant has previously been denied a grain dealer or warehouse operator license or whether the applicant has had either license suspended or revoked by the department;

(12) Any other reasonable information the department finds necessary to carry out the purpose and provisions of this chapter. [2011 c 336 § 600; 1987 c 393 § 17; 1983 c 305 § 20; 1979 ex.s. c 238 § 13; 1975 1st ex.s. c 7 § 21; 1963 c 124 § 4.]

Additional notes found at www.leg.wa.gov

22.09.045 Application for grain dealer license. Application for a license to operate as a grain dealer under the provisions of this chapter shall be on a form prescribed by the department and shall include:

(1) The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation, or other entity;

(2) The full name of each member of the firm or partnership, or the names of the officers of the company, society, cooperative association, or corporation;

(3) The principal business address of the applicant in the state and elsewhere;

(4) The name or names of the person or persons in this state authorized to receive and accept service of summons and legal notices of all kinds for the applicant;

(5) Whether the applicant has also applied for or has been issued a warehouse license under this chapter;

(6) The location of each business location from which the applicant intends to operate as a grain dealer in the state of Washington whether or not the business location is physically within the state of Washington, and the location of the headquarters or main office of the application;

(7) A financial statement to determine the net worth of the applicant to determine whether or not the applicant meets the minimum net worth requirements established by the director under chapter 34.05 RCW. However, if the applicant is a subsidiary of a larger company, corporation, society, or cooperative association, both the parent company and the subsidiary company must submit a financial statement to determine whether or not the applicant meets the minimum net worth requirements established by the director under chapter 34.05 RCW. All financial statement information required by this subsection shall be confidential information not subject to public disclosure;

(8) Whether the applicant has previously been denied a grain dealer or warehouse operator license or whether the applicant has had either license suspended or revoked by the department;

(9) Any other reasonable information the department finds necessary to carry out the purpose and provisions of this chapter. [2011 c 336 § 601; 1987 c 393 § 18; 1983 c 305 § 21.]

Additional notes found at www.leg.wa.gov

22.09.050 Warehouse license fees—Penalty. Any application for a license to operate a warehouse shall be accompanied by a license fee of one thousand three hundred fifty dollars for a terminal warehouse, one thousand fifty dollars for a subterminal warehouse, and five hundred dollars for a country warehouse. If a licensee operates more than one warehouse under one state license as provided for in RCW 22.09.030, the license fee shall be computed by multiplying the number of physically separated warehouses within the station by the applicable terminal, subterminal, or country warehouse license fee.

If an application for renewal of a warehouse license or licenses is not received by the department prior to the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he or she has not acted as a warehouse operator subsequent to the expiration of his or her prior license. [2011 c 336 § 602; 1997 c 303 § 6; 1994 c 46 § 4; 1991 c 109 § 25; 1986 c 203 § 13; 1983 c 305 § 22; 1979 ex.s. c 238 § 14; 1963 c 124 § 5.]

Findings—1997 c 303: See note following RCW 43.135.055.

Additional notes found at www.leg.wa.gov

22.09.055 Grain dealer—Exempt grain dealers—License fees—Penalty. An application for a license to operate as a grain dealer shall be accompanied by a license fee of seven hundred fifty dollars. The license fee for exempt grain dealers shall be three hundred dollars.

If an application for renewal of a grain dealer or exempt grain dealer license is not received by the department before the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he or she has not acted as a grain dealer or exempt grain dealer after the expiration of his or her prior license. [2011 c 336 § 603; 1997 c 303 § 7; 1994 c 46 § 5; 1991 c 109 § 26; 1988 c 95 § 1; 1986 c 203 § 14; 1983 c 305 § 23.]

Findings—1997 c 303: See note following RCW 43.135.055.

Additional notes found at www.leg.wa.gov

22.09.090 Bond requisites—Certificate of deposit or other security—Additional security—Suspension of license for failure to maintain. (1) An applicant for a warehouse or grain dealer license pursuant to the provisions of this chapter shall give a bond to the state of Washington executed by the applicant as the principal and by a corporate surety licensed to do business in this state as surety.

(2) The bond required under this section for the issuance of a warehouse license shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount that will be required for the warehouse bond which shall be computed at a rate of not less than fifteen cents nor more than thirty cents per bushel multiplied by the number of bushels of licensed commodity storage capacity of the warehouses of the applicant furnishing the bond. The applicant for a warehouse license may give a single bond meeting the requirements of this chapter, and all warehouses operated by the warehouse operator are deemed to be one warehouse for the purpose of the amount of the bond required under this subsection. Any change in the capacity of a warehouse or addition of any new warehouse involving a change in bond liability under this chapter shall be immediately reported to the department.

(3) The bond required under this section for the issuance of a grain dealer license shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount that will be required for the dealer bond which shall be computed at a rate not less than six percent nor more than twelve percent of the sales of agricultural commodities purchased by the dealer from producers during the dealer's last completed fiscal year or in the case of a grain dealer who has been engaged in business as a grain dealer less than one year, the estimated aggregate dollar amount to be paid by the dealer to producers for agricultural commodities to be purchased by the dealer during the dealer's first fiscal year.

(4) An applicant making application for both a warehouse license and a grain dealer license may satisfy the bonding requirements set forth in subsections (2) and (3) of this section by giving to the state of Washington a single bond for the issuance of both licenses, which bond shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount of the bond which shall be computed at a rate of not less than fifteen cents nor more than thirty cents per bushel multiplied by the number of bushels of licensed commodity storage capacity of the warehouses of the applicant furnishing the bond, or at the rate of not less than six percent nor more than twelve percent of the gross sales of agricultural commodities of the applicant whichever is greater.

(5) The bonds required under this chapter shall be approved by the department and shall be conditioned upon the faithful performance by the licensee of the duties imposed upon him or her by this chapter. If a person has applied for warehouse licenses to operate two or more warehouses in this state, the assets applicable to all warehouses, but not the deposits except in case of a station, are subject to the liabilities of each. The total and aggregate liability of the surety for all claims upon the bond is limited to the face amount of the bond.

(6) Any person required to submit a bond to the department under this chapter has the option to give the department a certificate of deposit or other security acceptable to the department payable to the director as trustee, in lieu of a bond or a portion thereof. The principal amount of the certificate

or other security shall be the same as that required for a surety bond under this chapter or may be in an amount which, when added to the bond, will satisfy the licensee's requirements for a surety bond under this chapter, and the interest thereon shall be made payable to the purchaser of the certificate or other security. The certificate of deposit or other security shall remain on deposit until it is released, canceled, or discharged as provided for by rule of the department. The provisions of this chapter that apply to a bond required under this chapter apply to each certificate of deposit or other security given in lieu of such a bond.

(7) The department may, when it has reason to believe that a grain dealer does not have the ability to pay producers for grain purchased, or when it determines that the grain dealer does not have a sufficient net worth to outstanding financial obligations ratio, or when it believes there may be claims made against the bond in excess of the face amount of the bond, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the department or may require an additional certificate of deposit or other security. The additional bonding or other security may exceed the maximum amount of the bond otherwise required under this chapter. Failure to post the additional bond, certificate of deposit, or other security constitutes grounds for suspension or revocation of a license issued under this chapter.

(8) Notwithstanding any other provisions of this chapter, the license of a warehouse operator or grain dealer shall automatically be suspended in accordance with RCW 22.09.100 for failure at any time to have or to maintain a bond, certificate of deposit, or other security or combination thereof in the amount and type required by this chapter. The department shall remove the suspension or issue a license as the case may be, when the required bond, certificate of deposit, or other security has been obtained. [2011 c 336 § 604; 1987 c 509 § 2; 1983 c 305 § 27; 1975 1st ex.s. c 7 § 23; 1969 ex.s. c 132 § 2; 1963 c 124 § 9.]

Grain indemnity fund program: See RCW 22.09.405 through 22.09.471.

Additional notes found at www.leg.wa.gov

22.09.100 Bonds—Duration—Release of surety—Cancellation by surety. (1) Every bond filed with and approved by the department shall without the necessity of periodic renewal remain in force and effect until such time as the warehouse operator or grain dealer license of each principal on the bond is revoked or otherwise canceled.

(2) The surety on a bond, as provided in this chapter, shall be released and discharged from all liability to the state, as to a principal whose license is revoked or canceled, which liability accrues after the expiration of thirty days from the effective date of the revocation or cancellation of the license. The surety on a bond under this chapter shall be released and discharged from all liability to the state accruing on the bond after the expiration of ninety days from the date upon which the surety lodges with the department a written request to be released and discharged. Nothing in this section shall operate to relieve, release, or discharge the surety from any liability which accrues before the expiration of the respective thirty or ninety-day period. In the event of a cancellation by the surety, the surety shall simultaneously send the notification of cancellation in writing to any other governmental agency

requesting it. Upon receiving any such request, the department shall promptly notify the principal or principals who furnished the bond, and unless the principal or principals file a new bond on or before the expiration of the respective thirty or ninety-day period, the department shall forthwith cancel the license of the principal or principals whose bond has been canceled. [2011 c 336 § 605; 1987 c 509 § 4; 1983 c 305 § 28; 1963 c 124 § 10.]

Additional notes found at www.leg.wa.gov

22.09.110 Casualty insurance required—Certificate to be filed. All commodities in storage in a warehouse shall be kept fully insured for the current market value of the commodity for the license period against loss by fire, lightning, internal explosion, windstorm, cyclone, and tornado. Evidence of the insurance coverage in the form of a certificate of insurance approved by the department shall be filed by the warehouse operator with the department at the time of making application for an annual license to operate a warehouse as required by this chapter. The department shall not issue a license until the certificate of insurance is received. [2011 c 336 § 606; 1983 c 305 § 29; 1963 c 124 § 11.]

Additional notes found at www.leg.wa.gov

22.09.130 Rights and duties of warehouse operator—Duty to serve—Receipts—Special binning—Unsuitable commodities—Put through commodities. (1) Every warehouse operator shall receive for handling, conditioning, storage, or shipment, so far as the capacity and facilities of his or her warehouse will permit, all commodities included in the provisions of this chapter, in suitable condition for storage, tendered him or her in the usual course of business from historical depositors and shall issue therefor a warehouse receipt or receipts in a form prescribed by the department as provided in this chapter or a scale weight ticket. Warehouse operators may accept agricultural commodities from new depositors who qualify to the extent of the capacity of that warehouse. The deposit for handling, conditioning, storage, or shipment of the commodity must be credited to the depositor in the books of the warehouse operator as soon as possible, but in no event later than seven days from the date of the deposit. If the commodity has been graded a warehouse receipt shall be issued within ten days after demand by the owner.

(2) If requested by the depositor, each lot of his or her commodity shall be kept in a special pile or special bin, if available, but in the case of a bulk commodity, if the lot or any portion of it does not equal the capacity of any available bin, the depositor may exercise his or her option to require the commodity to be specially binned only on agreement to pay charges based on the capacity of the available bin most nearly approximating the required capacity.

(3) A warehouse operator may refuse to accept for storage, commodities that are wet, damaged, insect-infested, or in other ways unsuitable for storage.

(4) Terminal and subterminal warehouse operators shall receive put through agricultural commodities to the extent satisfactory transportation arrangements can be made, but may not be required to receive agricultural commodities for

storage. [2011 c 336 § 607; 1983 c 305 § 30; 1981 c 296 § 38; 1979 ex.s. c 238 § 16; 1963 c 124 § 13.]

Additional notes found at www.leg.wa.gov

22.09.140 Rights and duties of licensees—Partial withdrawal—Adjustment or substitution of receipt—Liability to third parties. When partial withdrawal of his or her commodity is made by a depositor, the warehouse operator shall make appropriate notation thereof on the depositor's nonnegotiable receipt or on other records, or, if the warehouse operator has issued a negotiable receipt to the depositor, he or she shall claim, cancel, and replace it with a negotiable receipt showing the amount of such depositor's commodity remaining in the warehouse, and for his or her failure to claim and cancel, upon delivery to the owner of a commodity stored in his or her warehouse, a negotiable receipt issued by him or her, the negotiation of which would transfer the right to possession of such commodity, a warehouse operator shall be liable to anyone who purchases such receipt for value and in good faith, for failure to deliver to him or her all the commodity specified in the receipt, whether such purchaser acquired title to the negotiable receipt before or after delivery of any part of the commodity by the warehouse operator. [2011 c 336 § 608; 1963 c 124 § 14.]

22.09.150 Rights and duties of warehouse operator—Delivery of stored commodities—Damages. (1) The duty of the warehouse operator to deliver the commodities in storage is governed by the provisions of this chapter and the requirements of Article 7 of Title 62A RCW. Upon the return of the receipt to the proper warehouse operator, properly endorsed, and upon payment or tender of all advances and legal charges, the warehouse operator shall deliver commodities of the grade and quantity named upon the receipt to the holder of the receipt, except as provided by Article 7 of Title 62A RCW.

(2) A warehouse operator's duty to deliver any commodity is fulfilled if delivery is made pursuant to the contract with the depositor or if no contract exists, then to the several owners in the order of demand as rapidly as it can be done by ordinary diligence. Where delivery is made within forty-eight hours excluding Saturdays, Sundays, and legal holidays after facilities for receiving the commodity are provided, the delivery is deemed to comply with this subsection.

(3) No warehouse operator may fail to deliver a commodity as provided in this section, and delivery shall be made at the warehouse or station where the commodity was received unless the warehouse operator and depositor otherwise agree in writing.

(4) In addition to being subject to penalties provided in this chapter for a violation of this section, if a warehouse operator unreasonably fails to deliver commodities within the time as provided in this section, the person entitled to delivery of the commodity may maintain an action against the warehouse operator for any damages resulting from the warehouse operator's unreasonable failure to so deliver. In any such action the person entitled to delivery of the commodity has the option to seek recovery of his or her actual damages or liquidated damages of one-half of one percent of the value for each day's delay after the forty-eight hour period. [2011

c 336 § 609; 1983 c 305 § 31; 1979 ex.s. c 238 § 17; 1963 c 124 § 15.]

Additional notes found at www.leg.wa.gov

22.09.160 Rights and duties of licensees—Disposition of hazardous commodities. (1) If a warehouse operator discovers that as a result of a quality or condition of a certain commodity placed in his or her warehouse, including identity preserved commodities as provided for in RCW 22.09.130(2), of which he or she had no notice at the time of deposit, such commodity is a hazard to other commodities or to persons or to the warehouse he or she may notify the depositor that it will be removed. If the depositor does not accept delivery of such commodity upon removal the warehouse operator may sell the commodity at public or private sale without advertisement but with reasonable notification of the sale to all persons known to claim an interest in the commodity. If the warehouse operator after a reasonable effort is unable to sell the commodity, he or she may dispose of it in any other lawful manner and shall incur no liability by reason of such disposition.

(2) At any time prior to sale or disposition as authorized in this section, the warehouse operator shall deliver the commodity to any person entitled to it, upon proper demand and payment of charges.

(3) From the proceeds of sale or other disposition of the commodity the warehouse operator may satisfy his or her charges for which otherwise he or she would have a lien, and shall hold the balance thereof for delivery on the demand of any person to whom he or she would have been required to deliver the commodity. [2011 c 336 § 610; 1963 c 124 § 16.]

22.09.170 Rights and duties of warehouse operator—Special disposition of commodities under written order. If the owner of the commodity or his or her authorized agent gives or furnishes to a licensed warehouse operator a written instruction or order, and if the order is properly made a part of the warehouse operator's records and is available for departmental inspection, then the warehouse operator:

(1) May receive the commodity for the purpose of processing or conditioning;

(2) May receive the commodity for the purpose of shipping by the warehouse operator for the account of the depositor;

(3) May accept an agricultural commodity delivered as seed and handle it pursuant to the terms of a contract with the depositor and the contract shall be considered written instructions pursuant to this section. [2011 c 336 § 611; 1983 c 305 § 32; 1963 c 124 § 17.]

Additional notes found at www.leg.wa.gov

22.09.175 Presumptions regarding commodities—Approval of contracts. (1) A commodity deposited with a warehouse operator without a written agreement for sale of the commodity to the warehouse operator shall be handled and considered to be a commodity in storage.

(2) A presumption is hereby created that in all written agreements for the sale of commodities, the intent of the parties is that title and ownership to the commodities shall pass on the date of payment therefor. This presumption may only

be rebutted by a clear statement to the contrary in the agreement.

(3) Any warehouse operator or grain dealer entering into a deferred price contract with a depositor shall first have the form of the contract approved by the director. The director shall adopt rules setting forth the standards for approval of the contracts. [2011 c 336 § 612; 1983 c 305 § 33.]

Additional notes found at www.leg.wa.gov

22.09.180 Rights and duties of licensees—Records, contents—Itemized charges. (1) The licensee shall maintain complete records at all times with respect to all agricultural commodities handled, stored, shipped, or merchandised by him or her, including commodities owned by him or her. The department shall adopt rules specifying the minimum recordkeeping requirements necessary to comply with this section.

(2) The licensee shall maintain an itemized statement of any charges paid by the depositor. [2011 c 336 § 613; 1983 c 305 § 34; 1975 1st ex.s. c 7 § 24; 1963 c 124 § 18.]

Additional notes found at www.leg.wa.gov

22.09.190 Rights and duties of warehouse operator—Rebates, preferences, etc., prohibited. No warehouse operator subject to the provisions of this chapter may:

(1) Directly or indirectly, by any special charge, rebate, drawback, or other device, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered in the handling, conditioning, storage, or shipment of any commodity than he or she demands, collects, or receives from any other person for doing for him or her a like and contemporaneous service in the handling, conditioning, storage, or shipment of any commodity under substantially similar circumstances or conditions;

(2) Make or give any undue or unreasonable preference or advantage to any person in any respect whatsoever;

(3) Subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [2011 c 336 § 614; 1983 c 305 § 35; 1963 c 124 § 19.]

Additional notes found at www.leg.wa.gov

22.09.230 Rights and duties of warehouse licensees—Signs—Use of "Washington Bonded Warehouse." Every warehouse licensee shall post at or near the main entrance to each of his or her warehouses a sign as prescribed by the department which shall include the words "Washington Bonded Warehouse." It is unlawful to display such sign or any sign of similar appearance or bearing the same words, or words of similar import, when the warehouse is not licensed and bonded under this chapter. [2011 c 336 § 615; 1983 c 305 § 39; 1963 c 124 § 23.]

Additional notes found at www.leg.wa.gov

22.09.240 Rights and duties of warehouse operator—Schedule of rates—Posting—Revision. Every warehouse operator shall annually, during the first week in July, publish by posting in a conspicuous place in each of his or her warehouses the schedule of handling, conditioning, and storage rates filed with the department for the ensuing license year. The schedule shall be kept posted, and the rates shall not be

changed during such year except after thirty days' written notice to the director and proper posting of the changes on the licensee's premises. [2011 c 336 § 616; 1991 c 109 § 29; 1983 c 305 § 40; 1963 c 124 § 24.]

Additional notes found at www.leg.wa.gov

22.09.250 Rights and duties of warehouse operator—Unlawful practices. It is unlawful for a warehouse operator to:

(1) Issue a warehouse receipt for any commodity that he or she does not have in his or her warehouse at the time the receipt is issued;

(2) Issue warehouse receipts in excess of the amount of the commodities held in the licensee's warehouse to cover the receipt;

(3) Remove, deliver, direct, assist, or permit any person to remove, or deliver any commodity from any warehouse for which warehouse receipts have been issued and are outstanding without receiving and canceling the warehouse receipt issued therefor;

(4) Sell, encumber, ship, transfer, or in any manner remove or permit to be shipped, transferred, or removed from a warehouse any commodity received by him or her for deposit, handling, conditioning, or shipment, for which scale weight tickets have been issued without the written approval of the holder of the scale weight ticket and such transfer shall be shown on the individual depositor's account and the inventory records of the warehouse operator;

(5) Remove, deliver, direct, assist, or permit any person to deliver, or remove any commodities from any warehouse, whereby the amount of any fairly representative grade or class of any commodity in the warehouses of the licensee is reduced below the amount for which warehouse receipts or scale weight tickets for the particular commodity are outstanding;

(6) Issue a warehouse receipt showing a grade or description different from the grade or description of the commodity delivered;

(7) Issue a warehouse receipt or scale weight ticket that exceeds the amount of the actual quantity of commodities delivered for storage;

(8) Fail to deliver commodities pursuant to RCW 22.09.150 upon demand of the depositor;

(9) Knowingly accept for storage any commodity destined for human consumption that has been contaminated with an agricultural pesticide or filth rendering it unfit for human consumption, if the commodities are commingled with any uncontaminated commodity;

(10) Terminate storage of a commodity in his or her warehouse without giving thirty days' written notice to the depositor. [2011 c 336 § 617; 1983 c 305 § 41; 1963 c 124 § 25.]

Additional notes found at www.leg.wa.gov

22.09.260 Deposit of commodities unfit for human consumption—Notice. No depositor may knowingly deliver for handling, conditioning, storage, or shipment any commodity treated with an agricultural pesticide or contaminated with filth rendering it unfit for human consumption

without first notifying the warehouse operator. [2011 c 336 § 618; 1983 c 305 § 42; 1963 c 124 § 26.]

Additional notes found at www.leg.wa.gov

22.09.290 Warehouse receipts—Required terms. (1) Every warehouse receipt issued for commodities covered by this chapter shall embody within its written or printed terms:

(a) The grade of the commodities as described by the official standards of this state, unless the identity of the commodity is in fact preserved in a special pile or special bin, and an identifying mark of such pile or bin shall appear on the face of the receipt and on the pile or bin. A commodity in a special pile or bin shall not be removed or relocated without canceling the outstanding receipt and issuing a new receipt showing the change;

(b) Such other terms and conditions as required by Article 7 of Title 62A RCW: PROVIDED, That nothing contained therein requires a receipt issued for wheat to specifically state the variety of wheat by name;

(c) A clause reserving for the warehouse operator the optional right to terminate storage upon thirty days' written notice to the depositor and collect outstanding charges against any lot of commodities after June 30th following the date of the receipt.

(2) Warehouse receipts issued under the United States warehouse act (7 USCA § 241 et seq.) are deemed to fulfill the requirements of this chapter so far as it pertains to the issuance of warehouse receipts. [2011 c 336 § 619; 1989 c 354 § 46; 1983 c 305 § 43; 1979 ex.s. c 238 § 19; 1963 c 124 § 29.]

Additional notes found at www.leg.wa.gov

22.09.300 Warehouse receipts—Forms, numbering, printing, bond—Compliance with Article 7 of Title 62A RCW—Confiscation. (1) All warehouse receipts issued under this chapter shall be upon forms prescribed by the department and supplied only to licensed warehouse operators at cost of printing, packing, and shipping, as determined by the department. They shall contain the state number of such license and shall be numbered serially for each state number and the original negotiable receipts shall bear the state seal. Requests for such receipts shall be on forms furnished by the department and shall be accompanied by payment to cover cost: PROVIDED, That the department by order may allow a warehouse operator to have his or her individual warehouse receipts printed, after the form of the receipt is approved as in compliance with this chapter, and the warehouse operator's printer shall supply an affidavit stating the amount of receipts printed, numbers thereof: PROVIDED FURTHER, That the warehouse operator must supply a bond in an amount fixed by the department and not to exceed five thousand dollars to cover any loss resulting from the unlawful use of any such receipts.

(2) All warehouse receipts shall comply with the provisions of Article 7 of Title 62A RCW as enacted or hereafter amended, except as to the variety of wheat as set forth in RCW 22.09.290(1)(b) herein, and with the provisions of this chapter where not inconsistent or in conflict with Article 7 of Title 62A RCW. All receipts remaining unused shall be confiscated by the department if the license required herein is not

promptly renewed or is suspended, revoked, or canceled. [2011 c 336 § 620; 1979 ex.s. c 238 § 20; 1963 c 124 § 30.]

22.09.320 Warehouse receipts—Lost or destroyed receipts. In case any warehouse receipt issued by a licensee shall be lost or destroyed, the owner thereof shall be entitled to a duplicate receipt from the licensee upon executing and delivering to the warehouse operator issuing such receipt, a bond in double the value of the commodity covered by such lost receipt, with good and sufficient surety to indemnify the warehouse operator against any loss sustained by reason of the issuance of such duplicate receipt, and such duplicate receipt shall state that it is issued in lieu of the former receipt, giving the number and date thereof. [2011 c 336 § 621; 1963 c 124 § 32.]

22.09.340 Examination of receipts and commodities—Request—Fee—Access to bins—Records and accounts—Out-of-state offices. (1) Upon the request of any person or persons having an interest in a commodity stored in any public warehouse and upon payment of fifty dollars in advance by the person or persons, the department may cause the warehouse to be inspected and shall check the outstanding negotiable and nonnegotiable warehouse receipts, and scale weight tickets that have not been superseded by negotiable or nonnegotiable warehouse receipts, with the commodities on hand and shall report the amount of receipts and scale weight tickets outstanding and the amount of storage, if any. If the cost of the examination is more than fifty dollars, the person or persons having an interest in the commodity stored in the warehouse and requesting the examination, shall pay the additional cost to the department, unless a shortage is found to exist.

(2) A warehouse shall be maintained in a manner that will provide a reasonable means of ingress and egress to the various storage bins and compartments by those persons authorized to make inspections, and an adequate facility to complete the inspections shall be provided.

(3) The property, books, records, accounts, papers, and proceedings of every such warehouse operator shall at all reasonable times be subject to inspection by the department. The warehouse operator shall maintain adequate records and systems for the filing and accounting of warehouse receipts, canceled warehouse receipts, scale weight tickets, other documents, and transactions necessary or common to the warehouse industry. Canceled warehouse receipts, copies of scale weight tickets, and other copies of documents evidencing ownership or ownership liability shall be retained by the warehouse operator for a period of at least three years from the date of deposit.

(4) Any warehouse operator whose principal office or headquarters is located outside the state of Washington shall make available, if requested, during ordinary business hours, at any of their warehouses licensed in the state of Washington, all books, documents, and records for inspection.

(5) Any grain dealer whose principal office or headquarters is located outside the state of Washington shall make available, if requested, all books, documents, and records for inspection during ordinary business hours at any facility located in the state of Washington, or if no facility in the state

of Washington, then at a Washington state department of agriculture office or other mutually acceptable place. [2011 c 336 § 622; 1983 c 305 § 46; 1963 c 124 § 34.]

Additional notes found at www.leg.wa.gov

22.09.345 Inspections—Notice, when issued—Failure to comply, penalty—Court order—Costs, expenses, attorneys' fees. (1) The department may give written notice to the warehouse operator or grain dealer to submit to inspection, and/or furnish required reports, documents, or other requested information, under such conditions and at such time as the department may deem necessary whenever a warehouse operator or grain dealer fails to:

(a) Submit his or her books, papers, or property to lawful inspection or audit;

(b) Submit required reports or documents to the department by their due date; or

(c) Furnish the department with requested information, including but not limited to correction notices.

(2) If the warehouse operator or grain dealer fails to comply with the terms of the notice within twenty-four hours from the date of its issuance, or within such further time as the department may allow, the department shall levy a fine of fifty dollars per day from the final date for compliance allowed by this section or the department. In those cases where the failure to comply continues for more than thirty days or where the director determines the failure to comply creates a threat of loss to depositors, the department may, in lieu of levying further fines petition the superior court of the county where the licensee's principal place of business in Washington is located, as shown by the license application, for an order:

(a) Authorizing the department to seize and take possession of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouse operator's or grain dealer's business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the warehouse operator or grain dealer from interfering with the department in the discharge of its duties as required by this chapter.

(3) All necessary costs and expenses, including attorneys' fees, incurred by the department in carrying out the provisions of this section may be recovered at the same time and as part of the action filed under this section. [2011 c 336 § 623; 1987 c 393 § 20; 1983 c 305 § 47.]

Additional notes found at www.leg.wa.gov

22.09.350 Remedies of department on discovery of shortage. (1) Whenever it appears that there is evidence after any investigation that a warehouse operator has a shortage, the department may levy a fine of one hundred dollars per day until the warehouse operator covers the shortage.

(2) In any case where the director determines the shortage creates a substantial or continuing threat of loss to the depositors of the warehouse operator, the department may, in lieu of levying a fine or further fines, give notice to the warehouse operator to comply with all or any of the following requirements:

(a) Cover the shortage;

(b) Give additional bond as requested by the department;

(c) Submit to such inspection as the department may deem necessary;

(d) Cease accepting further commodities from depositors or selling, encumbering, transporting, or otherwise changing possession, custody, or control of commodities owned by the warehouse operator until there is no longer a shortage.

(3) If the warehouse operator fails to comply with the terms of the notice provided for in subsection (2) of this section within twenty-four hours from the date of its issuance, or within such further time as the department may allow, the department may petition the superior court of the county where the licensee's principal place of business in Washington is located as shown by the license application, for an order:

(a) Authorizing the department to seize and take possession of all or a portion of special piles and special bins of commodities and all or a portion of commingled commodities in the warehouse or warehouses owned, operated, or controlled by the warehouse operator, and of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouse operator's warehouse business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the warehouse operator from interfering with the department in the discharge of its duties as required by this section. [2011 c 336 § 624; 1983 c 305 § 48; 1963 c 124 § 35.]

Additional notes found at www.leg.wa.gov

22.09.361 Seizure of commodities or warehouse operator's records—Department duties—Warehouse operator's remedies—Expenses and attorneys' fees. (1) Whenever the department, pursuant to court order, seizes and takes possession of all or a portion of special piles and special bins of commodities, all or a portion of commingled commodities in a warehouse owned, operated, or controlled by a warehouse operator, or books, papers, and property of any kind used in connection with the conduct of a warehouse operator's warehouse business, the department shall:

(a) Give written notice of its action to the surety on the bond of the warehouse operator and may notify the holders of record, as shown by the warehouse operator's records, of all warehouse receipts or scale weight tickets issued for commodities, to present their warehouse receipt or other evidence of deposits for inspection, or to account for the same. The department may thereupon cause an audit to be made of the affairs of the warehouse, especially with respect to the commodities in which there is an apparent shortage, to determine the amount of the shortage and compute the shortage as to each depositor as shown by the warehouse operator's records, if practicable. The department shall notify the warehouse operator and the surety on his or her bond of the approximate amount of the shortage and notify each depositor thereby affected by sending notice to the depositor's last known address as shown by the records of the warehouse operator.

(b) Retain possession of the commodities in the warehouse or warehouses, and of the books, papers, and property of the warehouse operator, until the warehouse operator or the surety on the bond has satisfied the claims of all holders

of warehouse receipts or other evidence of deposits, or, in case the shortage exceeds the amount of the bond, the surety on the bond has satisfied the claims pro rata.

(2) At any time within ten days after the department takes possession of any commodities or the books, papers, and property of any warehouse, the warehouse operator may serve notice upon the department to appear in the superior court of the county in which the warehouse is located, at a time to be fixed by the court, which shall not be less than five nor more than fifteen days from the date of the service of the notice, and show cause why such commodities, books, papers, and property should not be restored to his or her possession.

(3) All necessary expenses and attorneys' fees incurred by the department in carrying out the provisions of this section may be recovered in the same action or in a separate civil action brought by the department in the superior court.

(4) As a part of the expenses so incurred, the department is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this section. [2011 c 336 § 625; 1983 c 305 § 49.]

Additional notes found at www.leg.wa.gov

22.09.371 Depositor's lien. (1) When a depositor stores a commodity with a warehouse operator or sells a commodity to a grain dealer, the depositor has a first priority statutory lien on the commodity or the proceeds therefrom or on commodities owned by the warehouse operator or grain dealer if the depositor has written evidence of ownership disclosing a storage obligation or written evidence of sale. The lien arises at the time the title is transferred from the depositor to the warehouse operator or grain dealer, or if the commodity is under a storage obligation, the lien arises at the commencement of the storage obligation. The lien terminates when the liability of the warehouse operator or grain dealer to the depositor terminates or if the depositor sells his or her commodity to the warehouse operator or grain dealer, then thirty days after the date title passes. If, however, the depositor is tendered payment by check or draft, then the lien shall not terminate until forty days after the date title passes.

(2) The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouse operator or grain dealer, regardless of whether the creditor's lien or security interest attached to the commodity or proceeds before or after the date on which the depositor's lien attached under subsection (1) of this section.

(3) A depositor who claims a lien under subsection (1) of this section need not file any notice of the lien in order to perfect the lien.

(4) The lien created by subsection (1) of this section is discharged, except as to the proceeds therefrom and except as to commodities owned by the warehouse operator or grain dealer, upon sale of the commodity by the warehouse operator or grain dealer to a buyer in the ordinary course of business. [2011 c 336 § 626; 1987 c 393 § 21; 1983 c 305 § 50.]

Additional notes found at www.leg.wa.gov

22.09.381 Depositors' claims, processing by department. In the event of a failure of a grain dealer or warehouse

operator, the department may process the claims of depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of a sale of commodities in the following manner:

(1) The department shall give notice and provide a reasonable time to depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of sale of commodities to file their claims with the department.

(2) The department may investigate each claim and determine whether the claimant's commodities are under a storage obligation or whether a sale of the commodities has occurred. The department may, in writing, notify each claimant and the failed grain dealer or warehouse operator of the department's determination as to the status and amount of each claimant's claim. A claimant, failed warehouse operator, or grain dealer may request a hearing on the department's determination within twenty days of receipt of written notification, and a hearing shall be held in accordance with chapter 34.05 RCW.

(3) The department may inspect and audit the failed warehouse operator to determine whether the warehouse operator has in his or her possession sufficient quantities of commodities to cover his or her storage obligations. In the event of a shortage, the department shall determine each depositor's pro rata share of available commodities and the deficiency shall be considered as a claim of the depositor. Each type of commodity shall be treated separately for the purpose of determining shortages.

(4) The department shall determine the amount, if any, due each claimant by the surety and make demand upon the bond in the manner set forth in this chapter. [2011 c 336 § 627; 1983 c 305 § 51.]

Additional notes found at www.leg.wa.gov

22.09.391 Depositor's lien—Liquidation procedure. Upon the failure of a grain dealer or warehouse operator, the statutory lien created in RCW 22.09.371 shall be liquidated by the department to satisfy the claims of depositors in the following manner:

(1) The department shall take possession of all commodities in the warehouse, including those owned by the warehouse operator or grain dealer, and those that are under warehouse receipts or any written evidence of ownership that discloses a storage obligation by a failed warehouse operator, including but not limited to scale weight tickets, settlement sheets, and ledger cards. These commodities shall be distributed or sold and the proceeds distributed to satisfy the outstanding warehouse receipts or other written evidences of ownership. If a shortage exists, the department shall distribute the commodities or the proceeds from the sale of the commodities on a prorated basis to the depositors. To the extent the commodities or the proceeds from their sale are inadequate to satisfy the claims of depositors with evidence of storage obligations, the depositors have a first priority lien against any proceeds received from commodities sold while under a storage obligation or against any commodities owned by the failed warehouse operator or grain dealer.

(2) Depositors possessing written evidence of the sale of a commodity to the failed warehouse operator or grain dealer,

including but not limited to scale weight tickets, settlement sheets, deferred price contracts, or similar commodity delivery contracts, who have completed delivery and passed title during a thirty-day period immediately before the failure of the failed warehouse operator or grain dealer have a second priority lien against the commodity, the proceeds of the sale, or warehouse-owned or grain dealer-owned commodities. If the commodity, commodity proceeds, or warehouse-owned or grain dealer-owned commodities are insufficient to wholly satisfy the claim of depositors possessing written evidence of the sale of the commodity to the failed warehouse operator or grain dealer, each depositor shall receive a pro rata share thereof.

(3) Upon the satisfaction of the claims of depositors qualifying for first or second priority treatment, all other depositors possessing written evidence of the sale of the commodity to the failed warehouse operator or grain dealer have a third priority lien against the commodity, the proceeds of the sale, or warehouse-owned or grain dealer-owned commodities. If the commodities, commodity proceeds, or warehouse-owned or grain dealer-owned commodities are insufficient to wholly satisfy these claims, each depositor shall receive a pro rata share thereof.

(4) The director of agriculture may represent depositors whom, under RCW 22.09.381, the director has determined have claims against the failed warehouse operator or failed grain dealer in any action brought to enjoin or otherwise contest the distributions made by the director under this section. [2011 c 336 § 628; 1987 c 393 § 22; 1983 c 305 § 52.]

Additional notes found at www.leg.wa.gov

22.09.416 Grain indemnity fund program—Assessments. (1) Every licensed warehouse and grain dealer and every applicant for any such license shall pay assessments to the department for deposit in the grain indemnity fund according to the provisions of RCW 22.09.405 through 22.09.471 and rules promulgated by the department to implement this chapter.

(2) The rate of the assessments shall be established by rule, provided however, that no single assessment against a licensed warehouse or grain dealer or applicant for any such license shall exceed five percent of the bond amount that would otherwise have been required of such grain dealer, warehouse operator, or license applicant under RCW 22.09.090. [2011 c 336 § 629; 1987 c 509 § 9.]

Additional notes found at www.leg.wa.gov

22.09.436 Grain indemnity fund program—Advisory committee. (1) There is hereby created a grain indemnity fund advisory committee consisting of six members to be appointed by the director. The director shall make appointments to the committee no later than seven days following the date this section becomes effective pursuant to RCW 22.09.405. Of the initial appointments, three shall be for two-year terms and three shall be for three-year terms. Thereafter, appointments shall be for three-year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor

was appointed shall hold office for the remainder of the predecessor's term.

(2) The committee shall be composed of two producers primarily engaged in the production of agricultural commodities, two licensed grain dealers, and two licensed grain warehouse operators.

(3) The committee shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it. Each committee member shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel and subsistence expense under RCW 43.03.050 and 43.03.060. The expenses of the committee and its operation shall be paid from the grain indemnity fund.

(4) The committee shall have the power and duty to advise the director concerning assessments, administration of the grain indemnity fund, and payment of claims from the fund. [2011 c 336 § 630; 1987 c 509 § 13.]

Additional notes found at www.leg.wa.gov

22.09.441 Grain indemnity fund program—Processing of claims. In the event a grain dealer or warehouse fails, as defined in *RCW 22.09.011(21), or otherwise fails to comply with the provisions of this chapter or rules promulgated hereunder, the department shall process the claims of depositors producing written evidence of ownership disclosing a storage obligation or written evidence of a sale of commodities for damages caused by the failure, in the following manner:

(1) The department shall give notice and provide a reasonable time, not to exceed thirty days, to depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of sale of commodities to file their written verified claims with the department.

(2) The department may investigate each claim and determine whether the claimant's commodities are under a storage obligation or whether a sale of commodities has occurred. The department shall notify each claimant, the grain warehouse operator or grain dealer, and the committee of the department's determination as to the validity and amount of each claimant's claim. A claimant, warehouse operator, or grain dealer may request a hearing on the department's determination within twenty days of receipt of written notification and a hearing shall be held by the department pursuant to chapter 34.05 RCW. Upon determining the amount and validity of the claim, the director shall pay the claim from the grain indemnity fund.

(3) The department may inspect and audit a failed warehouse operator, as defined by *RCW 22.09.011(21) to determine whether the warehouse operator has in his or her possession, sufficient quantities of commodities to cover his or her storage obligations. In the event of a shortage, the department shall determine each depositor's pro rata share of available commodities and the deficiency shall be considered as a claim of the depositor. Each type of commodity shall be treated separately for the purpose of determining shortages. [2011 c 336 § 631; 1987 c 509 § 14.]

*Reviser's note: RCW 22.09.011 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (21) to subsection (9).

Additional notes found at www.leg.wa.gov

22.09.446 Grain indemnity fund program—Failure to file claim in time. If a depositor or creditor, after notification, refuses or neglects to file in the office of the director his or her verified claim against a warehouse operator or grain dealer as requested by the director within thirty days from the date of the request, the director shall thereupon be relieved of responsibility for taking action with respect to such claim later asserted and no such claim shall be paid from the grain indemnity fund. [2011 c 336 § 632; 1987 c 509 § 15.]

Additional notes found at www.leg.wa.gov

22.09.451 Grain indemnity fund program—Payment limitations. Subject to the provisions of RCW 22.09.456 and 22.09.461 and to a maximum payment of seven hundred fifty thousand dollars on all claims against a single licensee, approved claims against a licensed warehouse operator or licensed grain dealer shall be paid from the grain indemnity fund in the following amounts:

(1) Approved claims against a licensed warehouse operator shall be paid in full;

(2) Approved claims against a licensed grain dealer for payments due within thirty days of transfer of title shall be paid in full for the first twenty-five thousand dollars of the claim. The amount of such a claim in excess of twenty-five thousand dollars shall be paid to the extent of eighty percent;

(3) Approved claims against a licensed grain dealer for payments due between thirty and ninety days of transfer of title shall be paid to the extent of eighty percent;

(4) Approved claims against a licensed grain dealer for payments due after ninety days from transfer of title shall be paid to the extent of seventy-five percent;

(5) In the event that approved claims against a single licensee exceed seven hundred fifty thousand dollars, recovery on those claims shall be prorated. [2011 c 336 § 633; 1987 c 509 § 16.]

Additional notes found at www.leg.wa.gov

22.09.466 Grain indemnity fund program—Debt and obligation of grain dealer or warehouse operator—Recovery by director. Amounts paid from the grain indemnity fund in satisfaction of any approved claim shall constitute a debt and obligation of the grain dealer or warehouse operator against whom the claim was made. On behalf of the grain indemnity fund, the director may bring suit, file a claim, or intervene in any legal proceeding to recover from the grain dealer or warehouse operator the amount of the payment made from the grain indemnity fund, together with costs and attorneys' fees incurred. In instances where the superior court is the appropriate forum for a recovery action, the director may elect to institute the action in the superior court of Thurston county. [2011 c 336 § 634; 1987 c 509 § 19.]

Additional notes found at www.leg.wa.gov

22.09.471 Grain indemnity fund program—Proceedings against licensee. The department may deny, suspend, or revoke the license of any grain dealer or warehouse operator who fails to timely pay assessments to the grain indemnity fund or against whom a claim has been made, approved, and paid from the grain indemnity fund. Proceedings for the denial, suspension, or revocation shall be subject to the pro-

visions of chapter 34.05 RCW. [2011 c 336 § 635; 1987 c 509 § 20.]

Additional notes found at www.leg.wa.gov

22.09.570 Action on bond by director—Authorized—Grounds. The director may bring action upon the bond of a warehouse operator or grain dealer against both principal against whom a claim has been made and the surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter or the rules adopted hereunder. Recovery for damages against a warehouse operator or grain dealer on a bond furnished under RCW 22.09.095 shall be limited to the bond amount that would be required for that warehouse operator or grain dealer under RCW 22.09.090. [2011 c 336 § 636; 1987 c 509 § 5; 1983 c 305 § 56; 1975 1st ex.s. c 7 § 29.]

Additional notes found at www.leg.wa.gov

22.09.580 Action on bond by director—Failure of depositor creditor to file claim upon request—Effect. If a depositor creditor after notification fails, refuses, or neglects to file in the office of the director his or her verified claim against a warehouse operator or grain dealer bond as requested by the director within thirty days from the date of the request, the director shall thereupon be relieved of further duty or action under this chapter on behalf of the depositor creditor. [2011 c 336 § 637; 1983 c 305 § 57; 1975 1st ex.s. c 7 § 30.]

Additional notes found at www.leg.wa.gov

22.09.590 Action on bond by director—Records as to depositor creditors missing or information incomplete—Effect. Where by reason of the absence of records or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all the depositor creditors, the director after exerting due diligence and making reasonable inquiry to secure that information from all reasonable and available sources, may make demand on a warehouse operator's or grain dealer's bond on the basis of information then in his or her possession, and thereafter shall not be liable or responsible for claims or the handling of claims that may subsequently appear or be discovered. [2011 c 336 § 638; 1983 c 305 § 58; 1975 1st ex.s. c 7 § 31.]

Additional notes found at www.leg.wa.gov

22.09.600 Action on bond by director—Powers of director. Upon ascertaining all claims and statements in the manner set forth in this chapter, the director may then make demand upon the warehouse operator's or grain dealer's bond on behalf of those claimants whose claims and statements have been filed, and has the power to settle or compromise the claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved. [2011 c 336 § 639; 1983 c 305 § 59; 1975 1st ex.s. c 7 § 32.]

Additional notes found at www.leg.wa.gov

22.09.610 Action on bond by director—When authorized—New bond, when required—Penalty for failure to file. Upon the refusal of the surety company to pay the

demand, the director may thereupon bring an action on the warehouse operator's or grain dealer's bond in behalf of the depositor creditors. Upon any action being commenced on the bond, the director may require the filing of a new bond, and immediately upon the recovery in any action on the bond, a new bond shall be filed. The failure to file the new bond or otherwise satisfy the security requirements of this chapter within ten days in either case constitutes grounds for the suspension or revocation of the license of any principal on the bond. [2011 c 336 § 640; 1987 c 509 § 6; 1983 c 305 § 60; 1975 1st ex.s. c 7 § 33.]

Additional notes found at www.leg.wa.gov

22.09.615 Action by depositor upon licensee's bond.

(1) If no action is commenced under RCW 22.09.570 within thirty days after written demand to the department, any depositor injured by the failure of a licensee to comply with the condition of his or her bond has a right of action upon the licensee's bond for the recovery of his or her damages. The depositor shall give the department immediate written notice of the commencement of any such action.

(2) Recovery under the bond shall be prorated when the claims exceed the liability under the bond.

(3) Whenever the claimed shortage exceeds the amount of the bond, it is not necessary for any depositor suing on the bond to join other depositors in the suit, and the burden of establishing proration is on the surety as a matter of defense. [2011 c 336 § 641; 1983 c 305 § 53; 1963 c 124 § 37. Formerly RCW 22.09.370.]

Additional notes found at www.leg.wa.gov

22.09.620 Payment for agricultural commodities purchased—Time requirements. Every warehouse operator or grain dealer must pay for agricultural commodities purchased by him or her at the time and in the manner specified in the contract with the depositor, but if no time is set by the contract, then within thirty days after taking possession for purpose of sale or taking title of the agricultural product. [2011 c 336 § 642; 1983 c 305 § 62; 1975 1st ex.s. c 7 § 34.]

Additional notes found at www.leg.wa.gov

22.09.660 Emergency storage situation—Forwarding to other warehouses. Upon determining that an emergency storage situation appears to exist, the director may authorize the warehouse operator to forward grain that is covered by negotiable receipts to other licensed warehouses for storage without canceling and reissuing the negotiable receipts pursuant to conditions established by rule. [2011 c 336 § 643; 2003 c 13 § 1; 1983 c 305 § 64.]

Additional notes found at www.leg.wa.gov

22.09.780 Inspection or grading of commodities. (1) In case any owner, consignee, or shipper of any commodity included under the provisions of this chapter, or his or her agent or broker, or any warehouse operator shall be aggrieved at the grading of such commodity, the person may request a reinspection or appeal inspection within three business days from the date of certificate. The reinspection or appeal may be based in the official file sample or upon a new sample drawn from the lot of the grain or commodity if the lot

remains intact and available for sampling. The reinspection or appeal inspection shall be of the same factors and scope as the original inspection.

(2) For commodities inspected under federal standards, the reinspection and appeal inspection procedure provided in the applicable federal regulations shall apply. For commodities inspected under state standards, the department shall provide a minimum of a reinspection and appeal inspection service. The reinspection shall consist of a full review of all relevant information and a reexamination of the commodity to determine the correctness of the grade assigned or other determination. The reinspection shall be performed by an authorized inspector of the department other than the inspector who performed the original inspection unless no other inspector is available. An appeal inspection shall be performed by a supervisory inspector.

(3) If the grading of any commodity for which federal standards have been fixed and the same adopted as official state standards has not been the subject of a hearing, in accordance with subsection (2) of this section, any interested party who is aggrieved with the grading of such commodity, may, with the approval of the secretary of the United States department of agriculture, appeal to the federal grain supervisor of the supervision district in which the state of Washington may be located. Such federal grain supervisor shall confer with the department inspectors and any other interested party and shall make such tests as he or she may deem necessary to determine the correct grade of the commodity in question. Such federal grade certificate shall be prima facie evidence of the correct grade of the commodity in any court in the state of Washington. [2011 c 336 § 644; 1989 c 354 § 51; 1963 c 124 § 45. Formerly RCW 22.09.450.]

Additional notes found at www.leg.wa.gov

22.09.790 Inspection or grading of commodities—Fees and charges. (1) The department shall fix the fees for inspection, grading, and weighing of the commodities included under the provisions of this chapter, which fees shall be sufficient to cover the cost of such service. The fees for inspection, weighing, and grading of such commodities shall be a lien upon the commodity so weighed, graded, or inspected which the department may require to be paid by the carrier or agent transporting the same and treated by it as an advanced charge, except when the bill of lading contains the notation "not for terminal weight and grade," and the commodity is not unloaded at a terminal warehouse.

(2) The department is authorized to make any tests relating to grade or quality of commodities covered by this chapter. The department may inspect and approve facilities and vessels to be used in transporting such commodities and provide any other necessary services. It may fix and charge a reasonable fee to be collected from the person or his or her agent requesting such service.

(3) The department shall so adjust the fees to be collected under this chapter as to meet the expenses necessary to carry out the provisions hereof, and may prescribe a different scale of fees for different localities. The department may also prescribe a reasonable charge for service performed at places other than terminal warehouses in addition to the regular fees when necessary to avoid rendering the services at a loss to the

state. [2011 c 336 § 645; 1963 c 124 § 46. Formerly RCW 22.09.460.]

22.09.800 Inspection or grading of commodities— Scales and weighing. If any terminal warehouse at inspection points is provided with proper scales and weighing facilities, the department may weigh the commodity upon the scales so provided. The department at least once each year shall cause to be examined, tested, and corrected, all scales used in weighing commodities in any of the cities designated as inspection points in this chapter or such places as may be hereinafter designated, and after such scale is tested, if found to be correct and in good condition, to seal the weights with a seal provided for that purpose and issue to the owner or proprietor a certificate authorizing the use of such scales for weighing commodities for the ensuing year, unless sooner revoked by the department. If such scales be found to be inaccurate or unfit for use, the department shall notify the party operating or using them, and the party thus notified shall, at his or her own expense, thoroughly repair the same before attempting to use them and until thus repaired or modified to the satisfaction of the department the certificate of such party shall be suspended or revoked at the discretion of the department. The party receiving such certificate shall pay to the department a reasonable fee for such inspection and certificate to be fixed by the department. It shall be the duty of the department to see that the provisions of this section are strictly enforced. [2011 c 336 § 646; 1963 c 124 § 47. Formerly RCW 22.09.470.]

22.09.810 Inspection or grading of commodities— Inspection of commodities shipped to or from places other than inspection points. In case any commodity under the provisions of this chapter is sold for delivery on Washington grade to be shipped to or from places not provided with state inspection under this chapter, the buyer, seller, or persons making delivery may have it inspected by notifying the department or its inspectors, whose duty it shall be to have such commodity inspected, and after it is inspected, to issue to the buyer, seller, or person delivering it, without undue delay, a certificate showing the grade of such commodity. The person or persons, or his or her agent, calling for such inspection shall pay for such inspection a reasonable fee to be fixed by the department. [2011 c 336 § 647; 1963 c 124 § 48. Formerly RCW 22.09.480.]

22.09.820 Inspection or grading of commodities— Unloading commodity without inspection or weighing. When commodities are shipped to points where inspection is provided and the bill of lading does not contain the notation "not for terminal weight and grade" and the commodity is unloaded by or on account of the consignee or his or her assignee without being inspected or weighed by a duly authorized inspector under the provisions of this chapter, the shipper's weight and grade shall be conclusive and final and shall be the weight and grade upon which settlement shall be made with the seller, and the consignee or his or her assignee, by whom such commodities are so unlawfully unloaded shall be liable to the seller thereof for liquidated damages in an amount equal to ten percent of the sale price of such com-

modities computed on the basis of the shipper's weight and grade. [2011 c 336 § 648; 1963 c 124 § 49. Formerly RCW 22.09.490.]

22.09.860 Police protection of terminal yards and tracks. All railroad companies and warehouse operators operating in the cities provided for inspection by this chapter shall furnish ample and sufficient police protection to all their several terminal yards and terminal tracks to securely protect all cars containing commodities while the same are in their possession. They shall prohibit and restrain all unauthorized persons, whether under the guise of sweepers, or under any other pretext whatever, from entering or loitering in or about their railroad yards or tracks and from entering any car of commodities under their control, or removing commodities therefrom, and shall employ and detail such number of watchmen as may be necessary for the purpose of carrying out the provisions of this section. [2011 c 336 § 649; 1963 c 124 § 27. Formerly RCW 22.09.270.]

Chapter 22.28 RCW

SAFE DEPOSIT COMPANIES

Sections

- 22.28.020 Safe deposit company a warehouse operator.
- 22.28.040 Procedure when rent is unpaid.

22.28.020 Safe deposit company a warehouse operator. Whenever any safe deposit company shall take or receive as bailee for hire and for safekeeping or storage any jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities, or valuable paper of any kind, or other valuable personal property, and shall have issued a receipt therefor, it shall be deemed to be a warehouse operator as to such property and the provisions of Article 7 of the Uniform Commercial Code, Title 62A RCW, shall apply to such deposit, or to the proceeds thereof, to the same extent and with the same effect, and be enforceable in the same manner as is now provided with reference to warehouse operators in said act. [2011 c 336 § 650; 1983 c 3 § 26; 1923 c 186 § 2; RRS § 3383.]

22.28.040 Procedure when rent is unpaid. If the amount due for the rental of any safe or box in the vaults of any safe deposit company shall not have been paid for one year, it may, at the expiration thereof, send to the person in whose name such safe or box stands on its books a notice in writing in securely closed, postpaid and certified mail, return receipt requested, directed to such person at his or her post office address, as recorded upon the books of the safe deposit company, notifying such person that if the amount due for the rental of such safe or box is not paid within thirty days from date, the safe deposit company will then cause such safe or box to be opened, and the contents thereof to be inventoried, sealed, and placed in one of its general safes or boxes.

Upon the expiration of thirty days from the date of mailing such notice, and the failure of the person in whose name the safe or box stands on the books of the company to pay the amount due for the rental thereof to the date of notice, the corporation may, in the presence of two officers of the corpo-

ration, cause such safe or box to be opened, and the contents thereof, if any, to be removed, inventoried and sealed in a package, upon which the officers shall distinctly mark the name of the person in whose name the safe or box stood on the books of the company, and the date of removal of the property, and when such package has been so marked for identification by the officers, it shall be placed in one of the general safes or boxes of the company at a rental not to exceed the original rental of the safe or box which was opened, and shall remain in such general safe or box for a period of not less than one year, unless sooner removed by the owner thereof, and two officers of the corporation shall thereupon file with the company a certificate which shall fully set out the date of the opening of such safe or box, the name of the person in whose name it stood and a reasonable description of the contents, if any.

A copy of such certificate shall within ten days thereafter be mailed to the person in whose name the safe or box so opened stood on the books of the company, at his or her last known post office address, in securely closed, postpaid and certified mail, return receipt requested, together with a notice that the contents will be kept, at the expense of such person, in a general safe or box in the vaults of the company, for a period of not less than one year. At any time after the mailing of such certificate and notice, and before the expiration of one year, such person may require the delivery of the contents of the safe as shown by said certificate, upon the payment of all rentals due at the time of opening of the safe or box, the cost of opening the box, and the payment of all further charges accrued during the period the contents remained in the general safe or box of the company.

The company may sell all the property or articles of value set out in said certificate, at public auction, provided a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper published in the county where the contents of the safe or box is located and where the holder chooses to conduct the sale. If the holder chooses not to sell the contents at public sale, the contents shall be delivered to the department of revenue as unclaimed property.

From the proceeds of the sale, the company shall deduct amounts which shall then be due for rental up to the time of opening the safe, the cost of opening thereof, and the further cost of safekeeping all of its contents for the period since the safe or box was opened, plus any additional charges accruing to the time of sale, including advertising and cost of sale. The balance, if any, of such proceeds, together with any unsold property, shall be deposited by the company within thirty days after the receipt of the same, with the department of revenue as unclaimed property. The company shall file with such deposit a certificate stating the name and last known place of residence of the owner of the property sold, the articles sold, the price obtained therefor, and showing that the notices herein required were duly mailed and that the sale was advertised as required herein. [2011 c 336 § 651; 1983 c 289 § 1; 1923 c 186 § 4; RRS § 3385. Formerly RCW 22.08.050, 22.28.040.]

Chapter 22.32 RCW GENERAL PENALTIES

Sections

- 22.32.020 Fictitious bill of lading and receipt.
22.32.030 Fraudulent tampering with or mixing goods.

22.32.020 Fictitious bill of lading and receipt. Every person or corporation engaged wholly or in part in the business of a common carrier or warehouse operator, and every officer, agent or employee thereof, who shall issue any bill of lading, receipt or other voucher by which it shall appear that any goods, wares or merchandise have been received by such carrier or warehouse operator, unless the same have been so received and shall be at the time actually under his or her control, or who shall issue any bill of lading, receipt or voucher containing any false statement concerning any material matter, shall be guilty of a gross misdemeanor. But no person shall be convicted under this section for the reason that the contents of any barrel, box, case, cask or other closed vessel or package mentioned in the bill of lading, receipt or voucher did not correspond with the description thereof in such instrument, if such description corresponds substantially with the mark on the outside of such barrel, box, case, cask, vessel or package, unless it appears that the defendant knew that such marks were untrue. [2011 c 336 § 652; 1909 c 249 § 392; RRS § 2644. Prior: 1891 c 69 § 7; Code 1881 § 836; 1873 p 193 § 62; 1854 p 85 § 56.]

22.32.030 Fraudulent tampering with or mixing goods. Every person mentioned in RCW 22.32.020, who shall fraudulently mix or tamper with any goods, wares or merchandise under his or her control, shall be guilty of a gross misdemeanor. [2011 c 336 § 653; 1909 c 249 § 393; RRS § 2645.]

Title 23

CORPORATIONS AND ASSOCIATIONS (PROFIT) (Business Corporation Act: See Title 23B RCW)

Chapters

23.86 Cooperative associations.

Chapter 23.86 RCW COOPERATIVE ASSOCIATIONS

Sections

- 23.86.085 Election of officers.

23.86.085 Election of officers. The directors shall elect a president and one or more vice presidents, who need not be directors. If the president and vice presidents are not members of the board of directors, the directors shall elect from their number a chair of the board of directors and one or more vice chairs. They shall also elect a secretary and treasurer, who need not be directors, and they may combine the two offices and designate the combined office as secretary-trea-

surer. The treasurer may be a bank or any depository, and as such shall not be considered an officer but a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only as authorized by the board of directors. [2011 c 336 § 654; 1989 c 307 § 11.]

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

Title 23B

WASHINGTON BUSINESS CORPORATION ACT

Chapters

- 23B.01** General provisions.
- 23B.02** Incorporation.
- 23B.08** Directors and officers.
- 23B.10** Amendment of articles of incorporation and bylaws.
- 23B.11** Merger and share exchange.
- 23B.12** Sale of assets.
- 23B.14** Dissolution.
- 23B.17** Miscellaneous provisions.

Chapter 23B.01 RCW

GENERAL PROVISIONS

Sections

- 23B.01.500 Domestic corporations—Notice of due date for payment of annual license fee and filing annual report.
- 23B.01.510 Foreign corporations—Notice of due date for payment of annual license fee and filing annual report.

23B.01.500 Domestic corporations—Notice of due date for payment of annual license fee and filing annual report. Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall send, by postal or electronic mail as elected by the domestic corporation, to each domestic corporation, at its registered office within the state, or to an electronic address designated by the corporation in a record retained by the secretary of state, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if any domestic corporation fails to pay its annual license fee or to file its annual report it is dissolved and ceases to exist. Failure of the secretary of state to provide any such notice does not relieve a corporation from its obligations to pay the annual license fees and to file the annual reports required by this title. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available. [2011 c 183 § 3; 1989 c 165 § 16.]

23B.01.510 Foreign corporations—Notice of due date for payment of annual license fee and filing annual report. Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall send by postal or electronic mail, as elected by the foreign corporation, to each foreign corporation qualified to do business in

this state, addressed to its registered office within this state, or to an electronic address designated by the corporation in a record retained by the secretary of state, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if it fails to pay its annual license fee or to file its annual report its certificate of authority to transact business within this state may be revoked. Failure of the secretary of state to send any such notice does not relieve a corporation from its obligations to pay the annual license fees and to obtain or file the annual reports required by this title. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available. [2011 c 183 § 4; 1990 c 178 § 3; 1989 c 165 § 17.]

Additional notes found at www.leg.wa.gov

Chapter 23B.02 RCW INCORPORATION

Sections

- 23B.02.060 Bylaws.

23B.02.060 Bylaws. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.

(3) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;

(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;

(e) Members of the board of directors may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200;

(f) Corporate action permitted or required by this title to be approved at a board of directors' meeting may be approved without a meeting if the corporate action is approved by all members of the board under RCW 23B.08.210;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;

(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;

(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;

(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and

(l) Unless approved by shareholders, a corporation may indemnify, or make advances to, a director only for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580 under RCW 23B.08.590.

(4) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation to the extent the provision does not infringe upon or limit the exclusive authority of the board of directors under RCW 23B.08.010(2)(b) or otherwise conflict with this title or any other law, the articles of incorporation, or a shareholders' agreement authorized by RCW 23B.07.320. [2011 c 328 § 1; 2009 c 189 § 5; 1989 c 165 § 31.]

Chapter 23B.08 RCW DIRECTORS AND OFFICERS

Sections

23B.08.010	Requirement for and duties of board of directors.
23B.08.245	Corporate action—Vote of shareholders.
23B.08.603	Indemnification or advance for expenses—Later amendment or repeal of subject provision.

23B.08.010 Requirement for and duties of board of directors. (1) Each corporation must have a board of directors, except that a corporation may dispense with or limit the authority of its board of directors by describing in its articles of incorporation, or in a shareholders' agreement authorized by RCW 23B.07.320, who will perform some or all of the duties of the board of directors.

(2) Subject to any limitation set forth in this title, the articles of incorporation, or a shareholders' agreement authorized by RCW 23B.07.320:

(a) All corporate powers shall be exercised by or under the authority of the corporation's board of directors; and

(b) The business and affairs of the corporation shall be managed under the direction of its board of directors, which shall have exclusive authority as to substantive decisions concerning management of the corporation's business. [2011 c 328 § 2; 1989 c 165 § 80.]

23B.08.245 Corporate action—Vote of shareholders. A corporation may agree to submit a corporate action to a vote of its shareholders whether or not the board of directors determines at any time subsequent to approving such a corporate action that it no longer recommends the corporate action. [2011 c 328 § 4.]

23B.08.603 Indemnification or advance for expenses—Later amendment or repeal of subject provision. The right of a director, officer, employee, or agent to indemnification or to advancement of expenses arising under

a provision in the articles of incorporation or a bylaw shall not be eliminated or impaired by an amendment to or repeal of that provision after the occurrence of the act or omission that is the subject of the proceeding for which indemnification or advancement of expenses under that provision is sought, unless the provision in effect at the time of such an act or omission explicitly authorizes the elimination or impairment of the right after such an action or omission has occurred. [2011 c 328 § 9.]

Chapter 23B.10 RCW AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

Sections

23B.10.030	Amendment of articles of incorporation by board of directors and shareholders.
23B.10.200	Amendment of bylaws by board of directors or shareholders.

23B.10.030 Amendment of articles of incorporation by board of directors and shareholders. (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors must recommend the amendment to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed amendment.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the amendment to be adopted must be approved by two-thirds, or, in the case of a public company, a majority, of the voting group comprising all the votes entitled to be cast on the proposed amendment, and of each other voting group entitled under RCW 23B.10.040 or the articles of incorporation to vote separately on the proposed amendment. The articles of incorporation may require a greater vote than that provided for in this subsection. The articles of incorporation of a corporation other than a public company may require a lesser vote than that provided for in this subsection, or may require a lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes enti-

tled to be cast on the proposed amendment and of each other voting group entitled to vote separately on the proposed amendment. Separate voting by additional voting groups is required on a proposed amendment under the circumstances described in RCW 23B.10.040. [2011 c 328 § 5; 2003 c 35 § 4; 1989 c 165 § 122.]

23B.10.200 Amendment of bylaws by board of directors or shareholders. (1) A corporation's board of directors, subject to the limitations set forth in RCW 23B.02.060(4), may amend or repeal the corporation's bylaws, or adopt new bylaws, except to the extent that:

(a) This power is reserved exclusively to the shareholders pursuant to the articles of incorporation or a shareholders' agreement authorized by RCW 23B.07.320, or pursuant to RCW 23B.10.205, 23B.10.210, or any other provision of this title; or

(b) The shareholders, in amending, repealing, or adopting a particular bylaw under subsection (2) of this section, provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders, subject to the limitations set forth in RCW 23B.02.060(4), may amend or repeal the corporation's bylaws, or adopt new bylaws, even though the bylaws may also be amended or repealed, or new bylaws may also be adopted, by its board of directors. [2011 c 328 § 3; 2009 c 189 § 35; 2007 c 467 § 7; 1989 c 165 § 129.]

Chapter 23B.11 RCW

MERGER AND SHARE EXCHANGE

Sections

23B.11.030 Approval of plan of merger or share exchange.

23B.11.030 Approval of plan of merger or share exchange. (1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(b) The shareholders entitled to vote must approve the plan, except as provided in subsection (7) of this section.

(3) The board of directors may condition its submission of the proposed plan of merger or share exchange on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed plan of merger or share exchange.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy or summary of the plan.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of merger must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan, unless shareholder approval is not required under subsection (7) of this section. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of merger and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of merger under the circumstances described in RCW 23B.11.035.

(6) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of share exchange must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of share exchange and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of share exchange under the circumstances described in RCW 23B.11.035.

(7) Approval by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RCW 23B.10.020, from its articles of incorporation before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of voting shares of the surviving corporation authorized by its articles of incorporation immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the

exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of participating shares authorized by its articles of incorporation immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is approved, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder approval, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors. [2011 c 328 § 6; 2009 c 189 § 38; 2003 c 35 § 6; 1989 c 165 § 133.]

Chapter 23B.12 RCW SALE OF ASSETS

Sections

23B.12.020 Sale of assets other than in the regular course of business.

23B.12.020 Sale of assets other than in the regular course of business. (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be approved:

(a) The board of directors must recommend the proposed transaction to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(b) The shareholders entitled to vote must approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed transaction.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the transaction must be approved by two-thirds of the voting

group comprising all the votes entitled to be cast on the transaction, and of each other voting group entitled under the articles of incorporation to vote separately on the transaction. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the transaction and of each other voting group entitled to vote separately on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is approved, the transaction may be abandoned, subject to any contractual rights, without further shareholder approval, in a manner determined by the board of directors.

(7) A transaction that constitutes a distribution is governed by RCW 23B.06.400 and not by this section. [2011 c 328 § 7; 2009 c 189 § 40; 2003 c 35 § 8; 1989 c 165 § 139.]

Chapter 23B.14 RCW DISSOLUTION

Sections

23B.14.020 Dissolution by board of directors and shareholders.

23B.14.020 Dissolution by board of directors and shareholders. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be approved:

(a) The board of directors must recommend dissolution to the shareholders unless (i) the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation or (ii) RCW 23B.08.245 applies, and in either case the board of directors communicates the basis for so proceeding to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed dissolution.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed dissolution either (a) by giving notice of a shareholders' meeting in accordance with RCW 23B.07.050 and stating that the purpose or one of the purposes of the meeting is to consider dissolving the corporation, or (b) in accordance with the requirements of RCW 23B.07.040 for approving the proposed dissolution without a meeting.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the proposed dissolution must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the proposed dissolution, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed dissolution. The articles of incorporation may require a greater or lesser vote than provided in this subsection.

tion, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed dissolution and of each other voting group entitled to vote separately on the proposed dissolution. [2011 c 328 § 8; 2009 c 189 § 50; 2006 c 52 § 6; 2003 c 35 § 10; 1989 c 165 § 155.]

Chapter 23B.17 RCW MISCELLANEOUS PROVISIONS

Sections

23B.17.015 Alternative quorum and voting requirements.

23B.17.015 Alternative quorum and voting requirements. (1) A corporation that meets the following requirements is subject to the alternative quorum and voting requirements set forth in subsection (2) of this section:

(a) As of the record date of the annual or special meeting of shareholders:

(i) The corporation is a public company;

(ii) Shares of its common stock are admitted to trading on a regulated market listed on the list of the regulated markets notified to the European commission by the member states under Article 16 of the investment services directive (93/22/EEC), as such list is amended from time to time; and

(iii) At least twenty percent of the shares of the corporation's common stock are held of record by the depository trust company and are deposited securities, as defined in the rules, bylaws, and organization certificate of the depository trust company, credited to the account or accounts of one or more stock depositories located in a member state of the European Union;

(b) At the time that such shares were initially listed on the regulated market, shares of the corporation's common stock were listed on the New York stock exchange or the nasdaq stock market;

(c) At the time that such shares were initially listed on the regulated market, such listing was a condition to the acquisition of one hundred percent of the equity interests of a foreign corporation or similar entity where:

(i) The securities of the foreign corporation or similar entity were admitted to trading on the regulated market immediately prior to the acquisition;

(ii) The consideration for the acquisition was newly issued shares of common stock of the corporation; and

(iii) The shares issued in connection with the acquisition equaled before the issuance more than forty percent of the outstanding common stock of the corporation; and

(d) At the corporation's most recent annual or special meeting of shareholders less than sixty-five percent of the shares within the voting group comprising all the votes entitled to be cast were present in person or by proxy.

(2) At any annual or special meeting actually held, other than by written consent under RCW 23B.07.040, by a corporation meeting the requirements of subsection (1) of this section:

(a) The required quorum of the voting group consisting of all votes entitled to be cast, and of each other voting group that includes common shares of the corporation which is enti-

led to vote separately with respect to a proposed corporate action, shall be the lesser of:

(i) A majority of the shares of such voting group other than shares credited to the account of stock depositories located in a member state of the European Union as described in subsection (1)(a)(iii) of this section, provided the number of votes comprising such majority equals or exceeds one-sixth of the total votes entitled to be cast by the voting group; or

(ii) One-third of the total votes entitled to be cast by the voting group.

(b) The vote required for approval by any voting group entitled to vote with respect to any amendment of the corporation's articles of incorporation or bylaws, or any plan of merger or share exchange to which the corporation is a party, or any sale, lease, exchange, or other disposition of all or substantially all of the corporation's property otherwise than in the usual and regular course of business, or dissolution, shall be a majority of the votes actually cast by such voting group with respect to the proposed corporate action, provided that the votes approving the proposed corporate action equal or exceed fifteen percent of the votes within the voting group.

(3) The alternative quorum and voting requirements specified in subsection (2) of this section shall, with respect to any corporation meeting the requirements of subsection (1) of this section, control over and supersede any greater quorum or voting requirements that may be specified in the corporation's articles of incorporation or bylaws or in RCW 23B.02.020, 23B.07.250, 23B.07.270, 23B.10.030, 23B.11.030, 23B.12.020, or 23B.14.020. [2011 c 42 § 1.]

Effective date—2011 c 42: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2011]." [2011 c 42 § 2.]

Title 24

CORPORATIONS AND ASSOCIATIONS (NONPROFIT)

Chapters

24.03 Washington nonprofit corporation act.

24.06 Nonprofit miscellaneous and mutual corporations act.

24.12 Corporations sole.

24.28 Granges.

24.34 Agricultural processing and marketing associations.

24.36 Fish marketing act.

24.50 Washington manufacturing services.

24.60 Intrastate building safety mutual aid system.

Chapter 24.03 RCW

WASHINGTON NONPROFIT CORPORATION ACT

Sections

24.03.105 Vacancies.

24.03.115 Committees.

24.03.230 Plan of distribution.

24.03.350 Service on foreign corporation.

24.03.400 Filing of annual or biennial report of domestic and foreign corporations—Notice—Reporting dates.

24.03.415 Disposition of fees.

24.03.105 Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining board of directors even though less than a quorum is present unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor in office. [2011 c 336 § 655; 1986 c 240 § 17; 1967 c 235 § 22.]

24.03.115 Committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation: PROVIDED, That no such committee shall have the authority of the board of directors in reference to amending, altering, or repealing the bylaws; electing, appointing, or removing any member of any such committee or any director or officer of the corporation; amending the articles of incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, or exchange of all or substantially all of the property and assets of the corporation not in the ordinary course of business; authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; adopting a plan for the distribution of the assets of the corporation; or amending, altering, or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered, or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon it or him or her by law. [2011 c 336 § 656; 1986 c 240 § 20; 1967 c 235 § 24.]

24.03.230 Plan of distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Notice in the form of a record setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which

members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

If the plan of distribution includes assets received and held by the corporation subject to limitations described in subsection (3) of RCW 24.03.225, notice of the adoption of the proposed plan shall be submitted to the attorney general by registered or certified mail directed to him or her at his or her office in Olympia, at least twenty days prior to the meeting at which the proposed plan is to be adopted. No plan for the distribution of such assets may be adopted without the approval of the attorney general, or the approval of a court of competent jurisdiction in a proceeding to which the attorney general is made a party. In the event that an objection is not filed within twenty days after the date of mailing, his or her approval shall be deemed to have been given. [2011 c 336 § 657; 2004 c 265 § 24; 1969 ex.s. c 115 § 3; 1967 c 235 § 47.]

24.03.350 Service on foreign corporation. The registered agent so appointed by a foreign corporation authorized to conduct affairs in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to conduct affairs in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, duplicate copies of such process, notice or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause one of such copies thereof to be forwarded by certified mail, addressed to the secretary of the corporation as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and his or her action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [2011 c 336 § 658; 1986 c 240 § 48; 1982 c 35 § 103; 1967 c 235 § 71.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.400 Filing of annual or biennial report of domestic and foreign corporations—Notice—Reporting

dates. Not less than thirty days prior to a corporation’s renewal date, or by December 1 of each year for a nonstaggered renewal, the secretary of state shall send to each domestic and foreign corporation, by postal or electronic mail, as elected by the domestic or foreign corporation, addressed to its registered office or to an electronic address designated by the corporation in a record retained by the secretary of state, a notice that its annual or biennial report must be filed as required by this chapter, and stating that if it fails to file its annual or biennial report it is dissolved or its certificate of authority revoked, as the case may be. Failure of the secretary of state to send any such notice does not relieve a corporation from its obligation to file the annual or biennial reports required by this chapter. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available.

Such report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year, or on an annual or biennial renewal date as the secretary of state may establish. The secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates.

If the secretary of state finds that such report substantially conforms to the requirements of this chapter, the secretary of state shall file the same. [2011 c 183 § 5; 1993 c 356 § 11; 1986 c 240 § 54; 1982 c 35 § 109; 1973 c 90 § 1; 1967 c 235 § 81.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Additional notes found at www.leg.wa.gov

24.03.415 Disposition of fees. Any money received by the secretary of state under the provisions of this chapter shall be by him or her paid into the state treasury as provided by law. [2011 c 336 § 659; 1967 c 235 § 84.]

State officers—Daily remittance of moneys to treasury: RCW 43.01.050.

Chapter 24.06 RCW

NONPROFIT MISCELLANEOUS AND MUTUAL CORPORATIONS ACT

Sections

24.06.025	Articles of incorporation.
24.06.055	Change of registered office or registered agent.
24.06.070	Shares—Issuance—Payment—Subscription agreements.
24.06.080	Shares—Certificates.
24.06.085	Liability of shareholders, subscribers, assignees, executors, trustees, etc.
24.06.130	Number and election of directors.
24.06.135	Vacancies.
24.06.145	Committees.
24.06.160	Books and records.
24.06.445	Filing of annual or biennial report of domestic and foreign corporations.
24.06.470	Penalties imposed upon directors and officers.
24.06.475	Interrogatories by secretary of state.

24.06.025 Articles of incorporation. The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual or for a stated number of years.

(3) The purpose or purposes for which the corporation is organized.

(4) The qualifications and the rights and responsibilities of the members and the manner of their election, appointment, or admission to membership and termination of membership; and, if there is more than one class of members or if the members of any one class are not equal, the relative rights and responsibilities of each class or each member.

(5) If the corporation is to have capital stock:

(a) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value;

(b) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(c) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(d) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(6) If the corporation is to distribute surplus funds to its members, stockholders, or other persons, provisions for determining the amount and time of the distribution.

(7) Provisions for distribution of assets on dissolution or final liquidation.

(8) Whether a dissenting shareholder or member shall be limited to a return of less than the fair value of his or her shares or membership.

(9) The address of its initial registered office, including street and number, and the name of its initial registered agent at such address.

(10) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors.

(11) The name and address of each incorporator.

(12) Any provision, not inconsistent with law, for the regulation of the internal affairs of the association, including:

(a) Overriding the release from liability provided in RCW 24.06.035(2); and

(b) Any provision which under this title is required or permitted to be set forth in the bylaws.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles

of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. [2011 c 336 § 660; 2001 c 271 § 2; 1987 c 212 § 708; 1982 c 35 § 120; 1969 ex.s. c 120 § 5.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.055 Change of registered office or registered agent. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement in the form prescribed by the secretary of state setting forth:

- (1) The name of the corporation.
- (2) If the address of its registered office is to be changed, the address to which the registered office is to be changed, including street and number.
- (3) If the current registered agent is to be changed, the name of its successor registered agent.
- (4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

Such statement shall be executed by the corporation by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered office to his, her, or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall file such statement, and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the address of such officer as shown by the most recent annual report of the corporation. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state. [2011 c 336 § 661; 1993 c 356 § 16; 1982 c 35 § 126; 1969 ex.s. c 120 § 11.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

Additional notes found at www.leg.wa.gov

24.06.070 Shares—Issuance—Payment—Subscription agreements. (1) Each corporation which is organized with capital stock shall have the power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(b) Entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends.

(c) Having preference over any other members or class or classes of shares as to the payment of dividends.

(d) Having preference in the assets of the corporation over any other members or class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(3) The consideration for the issuance of shares may be paid in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

Neither promissory notes nor future services shall constitute payment or part payment, for shares of a corporation.

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

(4) A subscription for shares of a corporation to be organized shall be in writing and be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his or her last post office address known to the corporation, with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his or her legal representative. [2011 c 336 § 662; 1969 ex.s. c 120 § 14.]

24.06.080 Shares—Certificates. The shares of a corporation shall be represented by certificates signed by the president or vice president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant

secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer at the date of its issue.

Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

Each certificate representing shares shall state upon the face thereof:

(1) That the corporation is organized under the laws of this state.

(2) The name of the person to whom issued.

(3) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(4) The par value of each share represented by such certificate, or a statement that the shares are without par value.

No certificate shall be issued for any share until such share is fully paid. [2011 c 336 § 663; 1969 ex.s. c 120 § 16.]

24.06.085 Liability of shareholders, subscribers, assignees, executors, trustees, etc. A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his or her hands shall be so liable.

No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder. [2011 c 336 § 664; 1969 ex.s. c 120 § 17.]

24.06.130 Number and election of directors. The number of directors of a corporation shall be not less than three and shall be fixed by the bylaws: PROVIDED, That the number of the first board of directors shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a

change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he or she is elected or appointed and until his or her successor shall have been elected or appointed and qualified.

A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation. [2011 c 336 § 665; 1969 ex.s. c 120 § 26.]

24.06.135 Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed, as the case may be, to fill a vacancy, shall be elected or appointed for the unexpired term of his or her predecessor in office. [2011 c 336 § 666; 1969 ex.s. c 120 § 27.]

24.06.145 Committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation: PROVIDED, That no such committee shall have the authority of the board of directors in reference to:

- (1) Amending, altering, or repealing the bylaws;
- (2) Electing, appointing, or removing any member of any such committee or any director or officer of the corporation;
- (3) Amending the articles of incorporation;
- (4) Adopting a plan of merger or a plan of consolidation with another corporation;
- (5) Authorizing the sale, lease, exchange, or mortgage, of all or substantially all of the property and assets of the corporation;
- (6) Authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; or
- (7) Amending, altering, or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered, or repealed by such committee.

The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon it or him or her by law. [2011 c 336 § 667; 1969 ex.s. c 120 § 29.]

24.06.160 Books and records. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, shareholders, board of directors, and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in this state a record of the names and addresses of its members and shareholders entitled to vote. All books and records of a corporation may be inspected by any member or shareholder, or his or her agent or attorney, for any proper purpose at any reasonable time. [2011 c 336 § 668; 1969 ex.s. c 120 § 32.]

24.06.445 Filing of annual or biennial report of domestic and foreign corporations. An annual or biennial report of each domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year or on such annual or biennial renewal date as the secretary of state may establish. The secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates. Proof to the satisfaction of the secretary of state that the report was deposited in the United States mails, in a sealed envelope, properly addressed to the secretary of state, with postage prepaid thereon, prior to the corporation's annual or biennial renewal date, shall be deemed compliance with this requirement.

If the secretary of state finds that a report substantially conforms to the requirements of this chapter, the secretary of state shall file the same.

Failure of the secretary of state to send any such notice shall not relieve a corporation from its obligation to file the annual reports required by this chapter. [2011 c 183 § 6; 1993 c 356 § 23; 1982 c 35 § 153; 1973 c 146 § 1; 1969 ex.s. c 120 § 89.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Additional notes found at www.leg.wa.gov

24.06.470 Penalties imposed upon directors and officers. Each director and officer of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter, to answer truthfully and fully any interrogatories propounded to him or her by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application, or other document filed with the secretary of state, which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof shall be fined in an amount not to exceed five hundred dollars on each count. [2011 c 336 § 669; 1969 ex.s. c 120 § 94.]

24.06.475 Interrogatories by secretary of state. The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any

officer or director thereof such interrogatories as may be reasonably necessary and proper to enable the secretary of state to ascertain whether such corporation has complied with all of the provisions of this chapter applicable to such corporation. All such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete, made in writing, and under oath. If such interrogatories are directed to an individual, they shall be answered personally by him or her, and if directed to the corporation they shall be answered by the president, a vice president, a secretary or any assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories are answered as required by this section, and even not then if the answers thereto disclose that the document is not in conformity with the provisions of this chapter.

The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter. [2011 c 336 § 670; 1982 c 35 § 157; 1969 ex.s. c 120 § 95.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Chapter 24.12 RCW CORPORATIONS SOLE

Sections

24.12.010	Corporations sole—Church and religious societies.
24.12.030	Filing articles—Property held in trust.
24.12.051	Notice of annual report requirement—Rules.

24.12.010 Corporations sole—Church and religious societies. Any person, being the bishop, overseer, or presiding elder of any church or religious denomination in this state, may, in conformity with the constitution, canons, rules, regulations, or discipline of such church or denomination, become a corporation sole, in the manner prescribed in this chapter, as nearly as may be; and, thereupon, said bishop, overseer, or presiding elder, as the case may be, together with his or her successors in office or position, by his or her official designation, shall be held and deemed to be a body corporate, with all the rights and powers prescribed in the case of corporations aggregate; and with all the privileges provided by law for religious corporations. [2011 c 336 § 671; 1915 c 79 § 1; RRS § 3884.]

24.12.030 Filing articles—Property held in trust. Articles of incorporation shall be filed in like manner as provided by law for corporations aggregate, and therein shall be set forth the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, overseer, or presiding elder, as the case may be, is required by the constitution, canons, rules, regulations, or discipline of such church or denomination to be filled, which statement shall be verified by affidavit, and for proof of the appointment or election of such bishop, overseer, or presiding elder, as the case may be, or any succeeding incumbent of such corporation, it shall be sufficient to file with the secretary of state the original or a copy of his or her

commission, or certificate, or letters of election or appointment, duly attested: PROVIDED, All property held in such official capacity by such bishop, overseer, or presiding elder, as the case may be, shall be in trust for the use, purpose, benefit, and behoof of his or her religious denomination, society, or church. [2011 c 336 § 672; 1981 c 302 § 10; 1915 c 79 § 3; RRS § 3886.]

Additional notes found at www.leg.wa.gov

24.12.051 Notice of annual report requirement—

Rules. (1) Not less than thirty days prior to a corporation sole's renewal date, the secretary of state shall send to each corporation sole, by postal or electronic mail, as elected by the corporation sole, addressed to its registered office, or to an electronic address designated by the corporation sole, in a record retained by the secretary of state, a notice that its annual report must be filed as required by this chapter, and stating that if it fails to file its annual report it shall be dissolved or its certificate of authority revoked, as the case may be. Failure of the secretary of state to send the notice does not relieve a corporation sole from its obligation to file the annual reports required by this chapter. The option to receive the notice provided under this section by electronic mail may be selected only when the secretary of state makes the option available.

(2)(a) The report of a corporation sole shall be delivered to the secretary of state on an annual renewal date as the secretary of state may establish. The secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates.

(b) If the secretary of state finds that the report substantially conforms to the requirements of this chapter, the secretary of state shall file that report. [2011 c 183 § 7; 2009 c 437 § 14.]

Chapter 24.28 RCW GRANGES

Sections

24.28.040 Use of term "grange"—"Person" defined.

24.28.040 Use of term "grange"—"Person" defined.

No person, doing business in this state shall be entitled to use or to register the term "grange" as part or all of his or her business name or other name or in connection with his or her products or services, or otherwise, unless either (1) he or she has complied with the provisions of this chapter or (2) he or she has obtained written consent of the Washington state grange certified thereto by its master. Any person violating the provisions of this section may be enjoined from using or displaying such name and doing business under such name at the instance of the Washington state grange or any grange organized under this chapter, or any member thereof: PROVIDED, That nothing herein shall prevent the continued use of the term "grange" by any person using said name prior to the adoption of *this act.

For the purposes of this section "person" shall include any person, partnership, corporation, or association of individuals. [2011 c 336 § 673; 1959 c 207 § 2.]

*Reviser's note: "this act" first appeared in chapter 207, Laws of 1959, section 1 of which amended RCW 24.28.010.

Chapter 24.34 RCW AGRICULTURAL PROCESSING AND MARKETING ASSOCIATIONS

Sections

24.34.010 Who may organize—Purposes—Limitations.

24.34.020 Monopoly or restraint of trade—Complaint—Procedure.

24.34.010 Who may organize—Purposes—Limitations. Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut growers, or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in intrastate commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: PROVIDED, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he or she may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of eight percent per annum.

And in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members. [2011 c 336 § 674; 1967 c 187 § 1.]

24.34.020 Monopoly or restraint of trade—Complaint—Procedure. If the attorney general has reason to believe that any such association as provided for in RCW 24.34.010 monopolizes or restrains trade to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he or she shall serve upon such association a complaint stating his or her charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

Such hearing, and any appeal which may be made from such hearing, shall be conducted and held subject to and in conformance with the provisions for adjudicative proceedings and judicial review in chapter 34.05 RCW, the administrative procedure act. [2011 c 336 § 675; 1989 c 175 § 75; 1967 c 187 § 2.]

Additional notes found at www.leg.wa.gov

Chapter 24.36 RCW
FISH MARKETING ACT

Sections

24.36.160	Bylaws of association—Fees, charges, marketing contract, dividends.
24.36.170	Bylaws of association—Membership.
24.36.260	Certificate of membership in nonstock associations.
24.36.270	Liability of member for association's debts.
24.36.290	Appraisal of expelled member's property—Payment.
24.36.440	Liability of member for breach of marketing contract.
24.36.460	Presumption that landlord or lessor can control delivery—Remedies for nondelivery or breach.

24.36.160 Bylaws of association—Fees, charges, marketing contract, dividends. The bylaws may provide:

(1) The amount of entrance, organization, and membership fees, if any; the manner and method of collection of the same; and the purposes for which they may be used.

(2) The amount which each member shall be required to pay annually, or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member for services rendered by the association to him or her and the time of payment and the manner of collection; and the marketing contract between the association and its members which every member may be required to sign.

(3) The amount of any dividends which may be declared on the stock or membership capital, which dividends shall not exceed eight percent per annum and which dividends shall be in the nature of interest and shall not affect the nonprofit character of any association organized hereunder. [2011 c 336 § 676; 1959 c 312 § 16.]

24.36.170 Bylaws of association—Membership. The bylaws may provide:

(1) The number and qualification of members of the association and the conditions precedent to membership or ownership of common stock.

(2) The method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock.

(3) The manner of assignment and transfer of the interest of members and of the shares of common stock.

(4) The conditions upon which and time when membership of any member shall cease.

(5) For the automatic suspension of the rights of a member when he or she ceases to be eligible to membership in the association; and the mode, manner, and effect of the expulsion of a member.

(6) The manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or upon the expulsion of a member or forfeiture of his or her membership, or at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors; and the conditions and terms for the repurchase by the corporation from its stockholders of their stock upon their disqualification as stockholders. [2011 c 336 § 677; 1959 c 312 § 17.]

24.36.260 Certificate of membership in nonstock associations. When a member of an association established without shares of stock has paid his or her membership fee in

full, he or she shall receive a certificate of membership. [2011 c 336 § 678; 1959 c 312 § 26.]

24.36.270 Liability of member for association's debts. No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or his or her subscription to the capital stock, including any unpaid balance on any promissory note given in payment thereof. [2011 c 336 § 679; 1959 c 312 § 27.]

24.36.290 Appraisal of expelled member's property—Payment. In case of the expulsion of a member, and where the bylaws do not provide any procedure or penalty, the board of directors shall equitably and conclusively appraise his or her property interest in the association and shall fix the amount thereof in money, which shall be paid to him or her within one year after such expulsion. [2011 c 336 § 680; 1959 c 312 § 29.]

24.36.440 Liability of member for breach of marketing contract. The marketing contract may fix, as liquidated damages, specific sums to be paid by the member to the association upon the breach by him or her of any provision of the marketing contract regarding the sale or delivery or withholding of fishery products; and may further provide that the member will pay all costs, premiums for bonds, expenses, and fees, in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties. [2011 c 336 § 681; 1959 c 312 § 44.]

24.36.460 Presumption that landlord or lessor can control delivery—Remedies for nondelivery or breach. In any action upon such marketing agreements, it shall be conclusively presumed that a landlord or lessor is able to control the delivery of fishery products produced by his or her equipment by tenants, or others, whose tenancy or possession or work on such equipment or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landlord or lessor, of such a marketing agreement; and in such actions, the foregoing remedies for nondelivery or breach shall lie and be enforceable against such landlord or lessor. [2011 c 336 § 682; 1959 c 312 § 46.]

Chapter 24.50 RCW

WASHINGTON MANUFACTURING SERVICES

Sections

24.50.010	Washington manufacturing services—Organization—Mission—Board of directors—Powers—Duties.
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24.50.010 Washington manufacturing services—Organization—Mission—Board of directors—Powers—Duties. (1) Washington manufacturing services is organized as a private, nonprofit corporation in accordance with chapter 24.03 RCW and this section. The mission of the corporation is to operate a modernization extension system, coordinate a

network of public and private modernization resources, and stimulate the competitiveness of small and midsize manufacturers in Washington.

(2) The corporation must be governed by a board of directors. A majority of the board of directors shall be representatives of small and medium-sized manufacturing firms and industry associations, networks, or consortia. The board must also include at least one member representing labor unions or labor councils and, as ex officio members, the director of the department of commerce, the executive director of the state board for community and technical colleges, and the director of the workforce training and education coordinating board, or their respective designees.

(3) The corporation may be known as impact Washington and may:

(a) Charge fees for services, make and execute contracts with any individual, corporation, association, public agency, or any other entity, and employ all other legal instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter; and

(b) Receive funds from federal, state, or local governments, private businesses, foundations, or any other source for purposes consistent with this chapter.

(4) The corporation must:

(a) Develop policies, plans, and programs to assist in the modernization of businesses in targeted sectors of Washington's economy and coordinate the delivery of modernization services;

(b) Provide information about the advantages of modernization and the modernization services available in the state to federal, state, and local economic development officials, state colleges and universities, and private providers;

(c) Collaborate with the Washington quality initiative in the development of manufacturing quality standards and quality certification programs;

(d) Collaborate with industry sector and cluster associations to inform import-impacted manufacturers about federal trade adjustment assistance funding;

(e) Serve as an information clearinghouse and provide access for users to the federal manufacturing extension partnership national research and information system; and

(f) Provide, either directly or through contracts, assistance to industry or cluster associations, networks, or consortia, that would be of value to their member firms in:

(i) Adopting advanced business management practices such as strategic planning and total quality management;

(ii) Developing mechanisms for interfirm collaboration and cooperation;

(iii) Appraising, purchasing, installing, and effectively using equipment, technologies, and processes that improve the quality of goods and services and the productivity of the firm;

(iv) Improving human resource systems and workforce training in a manner that moves firms toward flexible, high-performance work organizations;

(v) Developing new products;

(vi) Conducting market research, analysis, and development of new sales channels and export markets;

(vii) Improving processes to enhance environmental, health, and safety compliance; and

(viii) Improving credit, capital management, and business finance skills.

(5) Between thirty-five and sixty-five percent of the funds received by the corporation from the state must be used by the corporation for carrying out the duties under subsection (4)(f) of this section, consistent with the intent of RCW 24.50.005(2). [2011 c 310 § 1; 2006 c 34 § 2.]

Chapter 24.60 RCW

**INTRASTATE BUILDING SAFETY
MUTUAL AID SYSTEM**

Sections

24.60.005	System established—Member jurisdictions.
24.60.010	Definitions.
24.60.020	Request for assistance—Conditions.
24.60.030	Emergency responders—Qualifications.
24.60.040	Employee death—Benefits.
24.60.050	Temporary emergency responders.
24.60.060	Disputes regarding reimbursement—Arbitration.
24.60.070	Tort liability or immunity—Good faith.
24.60.080	Person responds without request or authorization.

24.60.005 System established—Member jurisdictions. (1) The intrastate building safety mutual aid system is established to provide for mutual assistance among member jurisdictions in the case of a building safety emergency or to participate in training and exercises.

(2) Unless otherwise provided in subsection (3) of this section, the following governmental entities are member jurisdictions of the intrastate building safety mutual aid system:

(a) Counties;

(b) Cities and towns;

(c) Tribal governmental entities that declare an intention, in writing, to participate as a member jurisdiction in the intrastate building safety mutual aid system; and

(d) Other governmental entities with responsibilities of ensuring building safety.

(3) Nothing in this section precludes a governmental entity participating in the intrastate building safety mutual aid system from entering into other mutual aid agreements otherwise permitted by law.

(4) Mutual assistance may include immediate responses to a building safety emergency, effort to mitigate or prevent further damages, or recovery activities.

(5) Nothing in this section is intended to interfere with other mutual aid systems established by law. Existing mutual aid systems including fire and law enforcement mobilization systems established by RCW 43.43.960 through 43.43.975 are unaffected by this chapter. [2011 c 215 § 1.]

24.60.010 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout the chapter.

(1) "Building safety emergency" means a situation that temporarily renders a building safety department incapable of providing building safety services and includes, but is not limited to, declared states of emergency, declared disasters, and other situations that temporarily impair the jurisdictions ability to provide building safety operations.

(2) "Chief executive officer" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor in those cities and towns with mayor-council or commission forms of government, where the mayor is directly elected, and it means the city manager in those cities and towns with council manager forms of government. Cities and towns may also designate a chief executive officer for the purposes of this chapter by ordinance.

(3) "Command" means the ultimate authority over emergency responders and resources, held by the responding member jurisdiction.

(4) "Emergency responder" means a person with skills, qualifications, training, knowledge, and experience to respond in the case of a declared emergency, as defined by law, including expertise in such areas as law enforcement, firefighting, emergency medical services, medicine, nursing, public health, emergency management, public works, building safety specialized equipment operations skills, or other skills needed to provide aid in a state of emergency.

(5) "Operational control" means the subset of command, granted by the responding member jurisdiction to the requesting member jurisdiction for the duration of the deployment of emergency responders or resources, under the intrastate building safety mutual aid system. Operational control includes the day-to-day direction and operation of emergency responders or resources while deployed under the intrastate building safety mutual aid system, but does not include discipline, promotion, hiring, and firing of emergency responders, nor ownership nor disposition of resources.

(6) "Requesting member jurisdiction" means a member jurisdiction that requests assistance from another member jurisdiction under the process established by the intrastate building safety mutual aid system.

(7) "Resources" includes supplies, materials, equipment, facilities, energy, services, information, or systems used to prevent, mitigate, respond to, or recover from any incident resulting in a deployment under this chapter.

(8) "Responding member jurisdiction" means a member jurisdiction that has or intends to provide emergency responders and/or resources to a requesting member jurisdiction under the process established by the intrastate building safety mutual aid system. [2011 c 215 § 9.]

24.60.020 Request for assistance—Conditions. A member jurisdiction may request assistance from other member jurisdictions to respond to, mitigate, or recover from a building safety emergency, or for participation of other member jurisdictions in authorized drills or exercises, subject to the following provisions:

(1) A member jurisdiction requesting assistance under the intrastate building safety mutual aid system must (a) be experiencing a building safety emergency as defined in RCW 24.60.010 or (b) anticipate undertaking drills or exercises.

(2) The chief executive officer of a requesting member jurisdiction, or his or her authorized designee, must request assistance under the intrastate building safety mutual aid system directly from the chief executive officer of another member jurisdiction.

(3) A verbal request for assistance must be confirmed by a written request as soon as practicable.

(4) A responding member jurisdiction may withhold requested resources for any reason.

(5) Emergency responders from a responding member jurisdiction are under the general command of the responding member jurisdiction and the operational control of the requesting member jurisdiction. All emergency intrastate building safety mutual aid system responders shall work within the infrastructure of any established incident command system as defined in RCW 38.52.010.

(6) Resources from a responding member jurisdiction are under the command of the responding member jurisdiction and the operational control of the requesting member jurisdiction.

(7) Response under this agreement is voluntary. Unless otherwise provided by this section, a requesting member jurisdiction shall reimburse responding member jurisdictions for the true and full value of assistance provided pursuant to the intrastate building safety mutual aid system. Requests for reimbursement must be made within thirty days in accordance with procedures and rates developed by the *intrastate building safety mutual aid oversight committee.

(8) If not otherwise prohibited, a responding member jurisdiction may donate requested emergency responder assistance and resources to a requesting member jurisdiction. [2011 c 215 § 2.]

**Reviser's note:* 2011 c 215 § 10, creating the oversight committee, was vetoed.

24.60.030 Emergency responders—Qualifications.

An emergency responder holding a license, certificate, or other permit issued by a responding member jurisdiction evidencing qualification in a professional, mechanical, or other skill shall be deemed to be licensed, certified, or permitted in the requesting member jurisdiction, subject to any limitations and conditions the chief executive of the requesting member jurisdiction may prescribe. [2011 c 215 § 3.]

24.60.040 Employee death—Benefits. An employee of a responding member jurisdiction that dies or sustains an injury in the course of his or her employment, while providing assistance under the intrastate building safety mutual aid system, is eligible to receive the benefits that would otherwise be available for injuries sustained or death in the course of employment. [2011 c 215 § 4.]

24.60.050 Temporary emergency responders. (1) A responding member jurisdiction may designate, in writing, persons to serve as temporary emergency responders for the purposes of deploying such persons under the intrastate building safety mutual aid system. A designation as a temporary emergency responder does not grant any right to wages, salary, pensions, health benefits, seniority or other benefits.

(2) The *intrastate building safety mutual aid oversight committee will develop guidelines and procedures detailing this temporary designation process. [2011 c 215 § 5.]

**Reviser's note:* 2011 c 215 § 10, creating the oversight committee, was vetoed.

24.60.060 Disputes regarding reimbursement—Arbitration. (1) A member jurisdiction that has a disagreement with another member jurisdiction regarding reimbursement for assistance under the provisions of this chapter may send a written request to the other member jurisdiction to resolve the matter within thirty days.

(2) If the dispute is not resolved within thirty days of the receipt of the written request, either party may request arbitration. [2011 c 215 § 6.]

24.60.070 Tort liability or immunity—Good faith. (1) For purposes of tort liability or immunity, an emergency responder of a responding member jurisdiction is considered an agent of the requesting member jurisdiction.

(2) A responding member jurisdiction rendering aid under this system is not liable for the acts or omissions in good faith of the responding member jurisdiction's emergency responders or resources.

(3) For purposes of this section, good faith does not include willful misconduct, gross negligence, or recklessness. [2011 c 215 § 7.]

24.60.080 Person responds without request or authorization. The intrastate building safety mutual aid system does not provide rights or privileges to any person responding for any reason if a member jurisdiction has not requested or authorized that person to respond to the building safety emergency. [2011 c 215 § 8.]

Title 25

PARTNERSHIPS

Chapters

25.12 Limited partnerships existing prior to June 6, 1945.

Chapter 25.12 RCW

LIMITED PARTNERSHIPS EXISTING PRIOR TO JUNE 6, 1945

Sections

25.12.060 Name of firm—When special partner liable as general partner.

25.12.060 Name of firm—When special partner liable as general partner. The business of the partnership may be conducted under a name in which the names of the general partners only shall be inserted, without the addition of the word "company" or any other general term. If the name of any special partner is used in such firm with his or her consent or privity, he or she shall be deemed and treated as a general partner, or if he or she personally makes any contract respecting the concerns of the partnership with any person except the general partners, he or she shall be deemed and treated as a general partner in relation to such contract, unless he or she makes it appear that in making such contract he or she acted and was recognized as a special partner only. [2011 c 336 § 683; 1955 c 15 § 25.12.060. Prior: 1869 p 381 § 6; RRS § 9971.]

Title 26

DOMESTIC RELATIONS

Chapters

26.04 Marriage.
26.09 Dissolution proceedings—Legal separation.
26.10 Nonparental actions for child custody.
26.12 Family court.
26.18 Child support enforcement.
26.19 Child support schedule.
26.26 Uniform parentage act.
26.28 Age of majority.
26.30 Uniform minor student capacity to borrow act.
26.33 Adoption.
26.40 Handicapped children.
26.50 Domestic violence prevention.
26.60 State registered domestic partnerships.

Chapter 26.04 RCW

MARRIAGE

Sections

26.04.100 Filing and recording—County auditor.
 26.04.150 Application for license—May be secured by mail—Execution and acknowledgment.
 26.04.190 Refusal of license—Appeal.
 26.04.220 Retention of license by person solemnizing—Auditor's record.
 26.04.240 Penalty for unlawful solemnization—Code 1881.
 26.04.250 Penalty for unlawful solemnization—1909 c 249.

26.04.100 Filing and recording—County auditor. The county auditor shall file said certificates and record them or bind them into numbered volumes, and note on the original index to the license issued the volume and page wherein such certificate is recorded or bound. He or she shall enter the date of filing and his or her name on the certificates for the files of the state registrar of vital statistics, and transmit, by the tenth day of each month, all such certificates filed with him or her during the preceding month. [2011 c 336 § 684; 1967 c 26 § 5; 1947 c 59 § 2; 1886 p 66 § 1; Code 1881 § 2386; 1867 p 105 § 2; 1866 p 82 § 8; Rem. Supp. 1947 § 8446.]

Additional notes found at www.leg.wa.gov

26.04.150 Application for license—May be secured by mail—Execution and acknowledgment. Any person may secure by mail from the county auditor of the county in the state of Washington where he or she intends to be married, an application, and execute and acknowledge said application before a notary public. [2011 c 336 § 685; 1963 c 230 § 2; 1939 c 204 § 3; RRS § 8450-2.]

26.04.190 Refusal of license—Appeal. Any county auditor is hereby authorized to refuse to issue a license to marry if, in his or her discretion, the applications executed by the parties or information coming to his or her knowledge as a result of the execution of said applications, justifies said refusal: PROVIDED, HOWEVER, The denied parties may appeal to the superior court of said county for an order to show cause, directed to said county auditor to appear before said court to show why said court should not grant an order to issue a license to said denied parties and, after due hearing, or

if the auditor fails to appear, said court may in its discretion, issue an order to said auditor directing him or her to issue said license; any hearings held by a superior court under RCW 26.04.140 through 26.04.200 may, in the discretion of said court, be held in chambers. [2011 c 336 § 686; 1939 c 204 § 7; RRS § 8450-6.]

26.04.220 Retention of license by person solemnizing—Auditor's record. The person solemnizing the marriage is authorized to retain in his or her possession the license, but the county auditor who issues the same, before delivering it, shall enter in his or her marriage record a memorandum of the names of the parties, the consent of the parents or guardian, if any, and the name of the affiant and the substance of the affidavit upon which said license issued, and the date of such license. [2011 c 336 § 687; Code 1881 § 2393; 1866 p 84 § 15; RRS § 8453.]

26.04.240 Penalty for unlawful solemnization—Code 1881. Any person who shall undertake to join others in marriage knowing that he or she is not lawfully authorized so to do, or any person authorized to solemnize marriage, who shall join persons in marriage contrary to the provisions of *this chapter, shall, upon conviction thereof, be punished by a fine of not more than five hundred, nor less than one hundred dollars. [2011 c 336 § 688; Code 1881 § 2395; 1866 p 84 § 17; RRS § 8454. FORMER PART OF SECTION: 1909 c 249 § 419; RRS § 2671 now codified as RCW 26.04.250.]

***Reviser's note:** "This chapter" (chapter 182, Code 1881) is codified as RCW 26.04.010, 26.04.050 through 26.04.140, and 26.04.220 through 26.04.240. Code 1881 §§ 2391 and 2392, being part of chapter 182, Code 1881, appear to be superseded by 1909 ex.s. c 16 § 3 (RCW 26.04.210) which is subject to the penalties of RCW 26.04.230.

26.04.250 Penalty for unlawful solemnization—1909 c 249. Every person who shall solemnize a marriage when either party thereto is known to him or her to be under the age of legal consent or a marriage to which, within his or her knowledge, any legal impediment exists, shall be guilty of a gross misdemeanor. [2011 c 336 § 689; 1979 ex.s. c 128 § 3; 1909 c 249 § 419; RRS § 2671. Formerly RCW 26.04.240, part.]

Punishment of gross misdemeanor when not fixed by statute: RCW 9.92.020.

Chapter 26.09 RCW

DISSOLUTION PROCEEDINGS— LEGAL SEPARATION

Sections

26.09.140	Payment of costs, attorneys' fees, etc.
26.09.173	Repealed.
26.09.191	Restrictions in temporary or permanent parenting plans. (Effective January 1, 2012.)
26.09.220	Parenting arrangements—Investigation and report—Appointment of guardian ad litem.
26.09.270	Child custody—Temporary custody order, temporary parenting plan, or modification of custody decree—Affidavits required.

26.09.140 Payment of costs, attorneys' fees, etc. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or

defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name. [2011 c 336 § 690; 1973 1st ex.s. c 157 § 14.]

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

26.09.191 Restrictions in temporary or permanent parenting plans. (Effective January 1, 2012.) (1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the

convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting

the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may

preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section:

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010. [2011 c 89 § 6; 2007 c 496 § 303; 2004 c 38 § 12; 1996 c 303 § 1; 1994 c 267 § 1. Prior: 1989 c 375 § 11; 1989 c 326 § 1; 1987 c 460 § 10.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Part headings not law—2007 c 496: See note following RCW 26.09.002.

Effective date—2004 c 38: See note following RCW 18.155.075.

Additional notes found at www.leg.wa.gov

26.09.220 Parenting arrangements—Investigation and report—Appointment of guardian ad litem.

(1)(a) The court may order an investigation and report concerning parenting arrangements for the child, or may appoint a guardian ad litem pursuant to RCW 26.12.175, or both. The investigation and report may be made by the guardian ad litem, court-appointed special advocate, the staff of the juvenile court, or other professional social service organization experienced in counseling children and families.

(b) An investigator is a person appointed as an investigator under RCW 26.12.050(1)(b) or any other third-party professional ordered or appointed by the court to provide an opinion, assessment, or evaluation regarding the creation or modification of a parenting plan.

(2) In preparing the report concerning a child, the investigator or person appointed under subsection (1) of this section may consult any person who may have information about the child and the potential parenting or custodian arrangements. Upon order of the court, the investigator or person appointed under subsection (1) of this section may refer the child to professional personnel for diagnosis. The investigator or person appointed under subsection (1) of this section may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the report by the investigator or person appointed under subsection (1) of this section may be received in evidence at the hearing.

(3) The investigator or person appointed under subsection (1) of this section shall provide his or her report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator or person appointed under subsection (1) of this section shall make available to counsel and to any party not represented by counsel his or her file of underlying data and reports, complete texts of diagnostic reports made to the investigator or appointed person pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom he or she has consulted. Any party to the proceeding may call the investigator or person appointed under subsection (1) of this section and any person whom the investigator or appointed person has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. [2011 c 292 § 4; 1993 c 289 § 1; 1989 c 375 § 12; 1987 c 460 § 16; 1973 1st ex.s. c 157 § 22.]

26.09.270 Child custody—Temporary custody order, temporary parenting plan, or modification of custody decree—Affidavits required. A party seeking a temporary custody order or a temporary parenting plan or modification of a custody decree or parenting plan shall submit together with his or her motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his or her affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted. [2011 c 336 § 691; 1989 c 375 § 15; 1973 1st ex.s. c 157 § 27.]

Chapter 26.10 RCW

NONPARENTAL ACTIONS FOR CHILD CUSTODY

Sections

26.10.034	Petitions—Indian child statement—Application of federal Indian child welfare act.
26.10.160	Visitation rights—Limitations. (<i>Effective January 1, 2012.</i>)
26.10.195	Repealed.

26.10.034 Petitions—Indian child statement—Application of federal Indian child welfare act. (1) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in RCW 13.38.040. If the child is an Indian child, chapter 13.38 RCW shall apply.

(2) Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.38 RCW does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.38 RCW does apply, the decree or order must also contain a finding that all notice and evidentiary requirements under the federal Indian child welfare act and chapter 13.38 RCW have been satisfied. [2011 c 309 § 31; 2004 c 64 § 1; 2003 c 105 § 7.]

26.10.160 Visitation rights—Limitations. (*Effective January 1, 2012.*) (1) A parent not granted custody of the child is entitled to reasonable visitation rights except as provided in subsection (2) of this section.

(2)(a) Visitation with the child shall be limited if it is found that the parent seeking visitation has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's visitation with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted

as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of

abuse or harm when that parent exercises visitation in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting visitation, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting visitation, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting visitation, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting visitation, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropri-

ate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have visitation with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have visitation with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have visitation with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presump-

tion under (d) of this subsection has been rebutted and supervised visitation has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of visitation between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised visitation has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of visitation between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting visitation. If the court expressly finds based on the evidence that limitations on visitation with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting visitation, the court shall restrain the person seeking visitation from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits visitation under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.

(4) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. Modification of a parent's visitation rights shall be subject to the requirements of subsection (2) of this section.

(5) For the purposes of this section:

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010. [2011 c 89 § 7; 2004 c 38 § 13; 1996 c 303 § 2; 1994 c 267 § 2; 1989 c 326 § 2; 1987 c 460 § 44.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Effective date—2004 c 38: See note following RCW 18.155.075.

Additional notes found at www.leg.wa.gov

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

Chapter 26.12 RCW FAMILY COURT

Sections

26.12.040	Substitute judge of family court.
26.12.175	Appointment of guardian ad litem—Independent investigation—Court-appointed special advocate program—Background information—Review of appointment.
26.12.177	Guardians ad litem—Training—Registry—Subregistry—Selection—Substitution—Exceptions.
26.12.188	Appointment of investigators—Training requirements.

26.12.040 Substitute judge of family court. In counties having more than one judge of the superior court the presiding judge may appoint a judge other than the judge of the family court to act as judge of the family court during any period when the judge of the family court is on vacation, absent, or for any reason unable to perform his or her duties. Any judge so appointed shall have all the powers and authority of a judge of the family court in cases under this chapter. [2011 c 336 § 692; 1949 c 50 § 4; Rem. Supp. 1949 § 997-33.]

26.12.175 Appointment of guardian ad litem—Independent investigation—Court-appointed special advocate program—Background information—Review of appointment. (1)(a) The court may appoint a guardian ad litem to represent the interests of a minor or dependent child when the court believes the appointment of a guardian ad litem is necessary to protect the best interests of the child in any proceeding under this chapter. The court may appoint a guardian ad litem from the court-appointed special advocate program, if that program exists in the county. The court shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs. The family court services professionals may also make a recommendation to the court regarding whether a guardian ad litem should be appointed for the child.

(b) The guardian ad litem's role is to investigate and report factual information regarding the issues ordered to be reported or investigated to the court. The guardian ad litem shall always represent the best interests of the child. Guardians ad litem under this title may make recommendations based upon his or her investigation, which the court may consider and weigh in conjunction with the recommendations of all of the parties. If a child expresses a preference regarding the parenting plan, the guardian ad litem shall report the preferences to the court, together with the facts relative to whether any preferences are being expressed voluntarily and the degree of the child's understanding. The court may require the guardian ad litem to provide periodic reports to the parties regarding the status of his or her investigation. The guardian ad litem shall file his or her report at least sixty days prior to trial.

(c) The parties to the proceeding may file with the court written responses to any report filed by the guardian ad litem. The court shall consider any written responses to a report filed by the guardian ad litem, including any factual information or recommendations provided in the report.

(d) The court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem. The court may order either or both parents to pay for the costs of the guardian ad litem, according to their ability to pay. If both parents are indigent, the county shall bear the cost of the guardian, subject to appropriation for guardians' ad litem services by the county legislative authority. Guardians ad litem who are not volunteers shall provide the parties with an itemized accounting of their time and billing for services each month.

(2)(a) If the guardian ad litem appointed is from the county court-appointed special advocate program, the program shall supervise any guardian ad litem assigned to the case. The court-appointed special advocate program shall be entitled to notice of all proceedings in the case.

(b) The legislative authority of each county may authorize creation of a court-appointed special advocate program. The county legislative authority may adopt rules of eligibility for court-appointed special advocate program services that are not inconsistent with this section.

(3) Each guardian ad litem program for compensated guardians ad litem and each court-appointed special advocate program shall maintain a background information record for each guardian ad litem in the program. The background information record shall include, but is not limited to, the following information:

- (a) Level of formal education;
- (b) General training related to the guardian ad litem's duties;
- (c) Specific training related to issues potentially faced by children in dissolution, custody, paternity, and other family law proceedings;
- (d) Specific training or education related to child disability or developmental issues;
- (e) Number of years' experience as a guardian ad litem;
- (f) Number of appointments as a guardian ad litem and county or counties of appointment;
- (g) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause;
- (h) Founded allegations of abuse or neglect as defined in RCW 26.44.020;
- (i) The results of an examination that shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050 and the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834. This background check shall be done through the Washington state patrol criminal identification section; and
- (j) Criminal history, as defined in RCW 9.94A.030, for the period covering ten years prior to the appointment.

The background information record shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made avail-

able to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person appointed as guardian ad litem shall provide the background information record to the court.

Upon appointment, the guardian ad litem, court-appointed special advocate program or guardian ad litem program, shall provide the parties or their attorneys with a copy of the background information record. The portion of the background information record containing the results of the criminal background check and the criminal history shall not be disclosed to the parties or their attorneys. The background information record shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends. The court shall immediately appoint the person recommended by the program.

(5) If a party in a case reasonably believes the court-appointed special advocate or volunteer guardian ad litem is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate or volunteer guardian ad litem on the grounds the advocate or volunteer is inappropriate or unqualified. [2011 c 292 § 6; 2009 c 480 § 3; 2000 c 124 § 6; 1996 c 249 § 15; 1993 c 289 § 4; 1991 c 367 § 17.]

Intent—1996 c 249: See note following RCW 2.56.030.

Additional notes found at www.leg.wa.gov

26.12.177 Guardians ad litem—Training—Registry—Subregistry—Selection—Substitution—Exceptions. (1) All guardians ad litem appointed under this title must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 26 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements. In cases involving allegations of limiting factors under RCW 26.09.191, the guardians ad litem appointed under this title must have additional relevant training under RCW 2.56.030(15) when it is available.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem under this title. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem under this title shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the

registry and given to the parties along with the background information record as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem is inappropriate or unqualified, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) Under this section, within either registry referred to in (a) of this subsection, a subregistry may be created that consists of guardians ad litem under contract with the department of social and health services' division of child support. Guardians ad litem on such a subregistry shall be selected and appointed in state-initiated paternity cases only.

(e) The superior court shall remove any person from the guardian ad litem registry who has been found to have misrepresented his or her qualifications.

(3) The rotational registry system shall not apply to court-appointed special advocate programs. [2011 c 292 § 7; 2009 c 480 § 4; 2007 c 496 § 305; 2005 c 282 § 30; 2000 c 124 § 7; 1997 c 41 § 7; 1996 c 249 § 18.]

Part headings not law—2007 c 496: See note following RCW 26.09.002.

Intent—1996 c 249: See note following RCW 2.56.030.

26.12.188 Appointment of investigators—Training requirements. (1) The court may appoint an investigator in addition to a guardian ad litem or court-appointed special advocate under RCW 26.12.175 and 26.12.177 to assist the court and make recommendations.

(2) An investigator is a person appointed as an investigator under RCW 26.12.050(1)(b) or any other third-party professional ordered or appointed by the court to provide an opinion, assessment, or evaluation regarding the creation or modification of a parenting plan.

(3) Investigators who are not supervised by a guardian ad litem or by a court-appointed special advocate program must comply with the training requirements applicable to guardians ad litem or court-appointed special advocates as provided under this chapter and court rule. [2011 c 292 § 5.]

Chapter 26.18 RCW

CHILD SUPPORT ENFORCEMENT

Sections

26.18.210 Child support data report.

26.18.210 Child support data report. In order to perform the required quadrennial review of the Washington state child support guidelines under RCW 26.19.025, the division of child support must prepare a report at least every four years using data compiled from child support court and administrative orders. The report must include all informa-

tion the division of child support determines is necessary to perform the quadrennial review. On a monthly basis, the clerk of the court must forward all child support worksheets that have been filed with the court to the division of child support. [2011 c 21 § 1; 2007 c 313 § 4; 2005 c 282 § 33; 1990 1st ex.s. c 2 § 22.]

Findings—2007 c 313: See note following RCW 26.19.025.

Additional notes found at www.leg.wa.gov

Chapter 26.19 RCW

CHILD SUPPORT SCHEDULE

Sections

26.19.025 Quadrennial review of child support guidelines and child support review report—Work group membership—Report to legislature.

26.19.071 Standards for determination of income.

26.19.025 Quadrennial review of child support guidelines and child support review report—Work group membership—Report to legislature. (1) Beginning in 2011 and every four years thereafter, the division of child support shall convene a work group to review the child support guidelines and the child support review report prepared under RCW 26.19.026 and 26.18.210 and determine if the application of the child support guidelines results in appropriate support orders. Membership of the work group shall be determined as provided in this subsection.

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate;

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives;

(c) The governor, in consultation with the division of child support, shall appoint the following members:

(i) The director of the division of child support;

(ii) A professor of law specializing in family law;

(iii) A representative from the Washington state bar association's family law executive committee;

(iv) An economist;

(v) A representative of the tribal community;

(vi) Two representatives from the superior court judges' association, including a superior court judge and a court commissioner who is familiar with child support issues;

(vii) A representative from the administrative office of the courts;

(viii) A prosecutor appointed by the Washington association of prosecuting attorneys;

(ix) A representative from legal services;

(x) Three noncustodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, noncustodial parents;

(xi) Three custodial parents, each of whom may be a representative of an advocacy group, an attorney, or an individual, with at least one representing the interests of low-income, custodial parents; and

(xii) An administrative law judge appointed by the office of administrative hearings.

(2) Appointments to the work group shall be made by December 1, 2010, and every four years thereafter. The gov-

ernor shall appoint the chair from among the work group membership.

(3) The division of child support shall provide staff support to the work group, and shall carefully consider all input received from interested organizations and individuals during the review process.

(4) The work group may form an executive committee, create subcommittees, designate alternative representatives, and define other procedures, as needed, for operation of the work group.

(5) Legislative members of the work group shall be reimbursed for travel expenses under RCW 44.04.120. Nonlegislative members, except those representing an employee or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(6) By October 1, 2011, and every four years thereafter, the work group shall report its findings and recommendations to the legislature, including recommendations for legislative action, if necessary. [2011 c 21 § 2; 2007 c 313 § 5; 1991 c 367 § 26.]

Findings—2007 c 313: "Federal law requires the states to periodically review and update their child support guidelines. Accurate and consistent reporting of the terms of child support orders entered by the courts or administrative agencies in Washington state is necessary in order to accomplish a review of the child support guidelines. In addition, a process for review of the guidelines should be established to ensure the integrity of any reviews undertaken to comply with federal law." [2007 c 313 § 1.]

Additional notes found at www.leg.wa.gov

26.19.071 Standards for determination of income.

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

- (a) Salaries;
- (b) Wages;
- (c) Commissions;
- (d) Deferred compensation;
- (e) Overtime, except as excluded for income in subsection (4)(i) of this section;
- (f) Contract-related benefits;
- (g) Income from second jobs, except as excluded for income in subsection (4)(i) of this section;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;

- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits;
- (t) Disability insurance benefits; and
- (u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

- (a) Income of a new spouse or new domestic partner or income of other adults in the household;
- (b) Child support received from other relationships;
- (c) Gifts and prizes;
- (d) Temporary assistance for needy families;
- (e) Supplemental security income;
- (f) Aged, blind, or disabled assistance benefits;
- (g) Pregnant women assistance benefits;
- (h) Food stamps; and
- (i) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, aged, blind, or disabled assistance benefits, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

- (a) Federal and state income taxes;
- (b) Federal insurance contributions act deductions;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance premiums;
- (f) Court-ordered maintenance to the extent actually paid;

(g) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and

(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully

employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

- (a) Full-time earnings at the current rate of pay;
- (b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;
- (c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;
- (d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;
- (e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census. [2011 1st sp.s. c 36 § 14; 2010 1st sp.s. c 8 § 14; 2009 c 84 § 3; 2008 c 6 § 1038; 1997 c 59 § 4; 1993 c 358 § 4; 1991 sp.s. c 28 § 5.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.
Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.
Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.
Effective date—2009 c 84: See note following RCW 26.19.020.
Part headings not law—Severability—2008 c 6: See RCW 26.60.900 and 26.60.901.
 Additional notes found at www.leg.wa.gov

Chapter 26.26 RCW

UNIFORM PARENTAGE ACT

Sections

26.26.011	Definitions.
26.26.021	Scope of act—Choice of law—Surrogate parentage contracts.
26.26.041	Protection of participants.
26.26.051	Determination of parentage.
26.26.101	Establishment of parent-child relationship.
26.26.106	No discrimination based on marital or domestic partnership status.
26.26.111	Consequences of establishment of parentage.
26.26.116	Presumption of parentage in context of marriage or domestic partnership.
26.26.130	Judgment or order determining parent and child relationship—Support judgment and orders—Residential provisions—Custody—Restraining orders—Notice of modification or termination of restraining order.
26.26.134	Support orders—Time limit, exception.
26.26.150	Enforcement of judgments or orders.
26.26.300	Acknowledgment of paternity.
26.26.305	Execution of acknowledgment of paternity.
26.26.310	Denial of paternity.
26.26.315	Rules for acknowledgment and denial of paternity.

26.26.320	Effect of acknowledgment or denial of paternity.
26.26.330	Proceeding for rescission of acknowledgment or denial of paternity.
26.26.335	Challenge after expiration of time for rescission of acknowledgment or denial of paternity.
26.26.340	Procedure for rescission or challenge of acknowledgment or denial of paternity.
26.26.360	Release of information.
26.26.375	Judicial proceedings.
26.26.400	Genetic testing—Application of RCW 26.26.405 through 26.26.450.
26.26.405	Order for genetic testing.
26.26.410	Requirements for genetic testing.
26.26.420	Genetic testing results—Rebuttal.
26.26.425	Costs of genetic testing.
26.26.430	Additional genetic testing.
26.26.435	Genetic testing when specimen not available.
26.26.445	Genetic testing—Identical brothers.
26.26.505	Standing to maintain proceeding to adjudicate parentage.
26.26.510	Parties to proceeding to adjudicate parentage.
26.26.525	Proceeding to adjudicate parentage—No time limitation: Child having no presumed or adjudicated second parent and no acknowledged father.
26.26.530	Proceeding to adjudicate parentage—Time limitation: Child having presumed parent.
26.26.535	Proceeding to adjudicate parentage—Authority to deny genetic testing.
26.26.540	Proceeding to adjudicate parentage—Time limitation: Child having acknowledged father or adjudicated parent.
26.26.545	Joinder of proceedings.
26.26.550	Proceeding to adjudicate parentage—Before birth.
26.26.555	Child as party—Representation.
26.26.570	Proceeding to adjudicate parentage—Admissibility of results of genetic testing—Expenses.
26.26.575	Proceeding to adjudicate parentage—Consequences of declining genetic testing.
26.26.585	Proceeding to adjudicate parentage—Admission of paternity authorized.
26.26.590	Proceeding to adjudicate parentage—Temporary order.
26.26.600	Rules for adjudication of parentage.
26.26.620	Dismissal for want of prosecution.
26.26.625	Order adjudicating parentage.
26.26.630	Binding effect of determination of parentage.
26.26.705	Child of assisted reproduction—Parental status of donor.
26.26.710	Parentage of child of assisted reproduction.
26.26.715	Consent to assisted reproduction.
26.26.720	Child of assisted reproduction—Limitation on dispute of parentage.
26.26.725	Child of assisted reproduction—Effect of dissolution of marriage or domestic partnership.
26.26.730	Child of assisted reproduction—Parental status of deceased individual.
26.26.735	Child of assisted reproduction—Effect of agreement between egg donor and woman who gives birth.
26.26.750	Identifying information—Requirement to provide—Disclosure.
26.26.903	Uniformity of application and construction—2002 c 302.
26.26.911	Short title—2002 c 302.

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

(1) "Acknowledged father" means a man who has established a father-child relationship under RCW 26.26.300 through 26.26.375.

(2) "Adjudicated parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

(3) "Alleged parent" means a person who alleges himself or herself to be, or is alleged to be, the genetic parent or a possible genetic parent of a child, but whose parentage has not been determined. The term does not include:

- (a) A presumed parent;
- (b) A person whose parental rights have been terminated or declared not to exist; or
- (c) A donor.

(4) "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse. The term includes:

- (a) Artificial insemination;
- (b) Donation of eggs;
- (c) Donation of embryos;
- (d) In vitro fertilization and transfer of embryos; and
- (e) Intracytoplasmic sperm injection.

(5) "Child" means an individual of any age whose parentage may be determined under this chapter.

(6) "Commence" means to file the petition seeking an adjudication of parentage in a superior court of this state or to serve a summons and the petition.

(7) "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under RCW 26.26.300 through 26.26.375 or adjudication by the court.

(8) "Domestic partner" means a state registered domestic partner as defined in chapter 26.60 RCW.

(9) "Donor" means an individual who contributes a gamete or gametes for assisted reproduction, whether or not for consideration. The term does not include:

(a) A person who provides a gamete or gametes to be used for assisted reproduction with his or her spouse or domestic partner; or

(b) A woman who gives birth to a child by means of assisted reproduction, except as otherwise provided in RCW 26.26.210 through 26.26.260 or 26.26.735.

(10) "Ethnic or racial group" means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.

(11) "Fertility clinic" means a facility that provides assisted reproduction services or gametes to be used in assisted reproduction.

(12) "Gamete" means either a sperm or an egg.

(13) "Genetic parent" means a person who is the source of the egg or sperm that produced the child. The term does not include a donor.

(14) "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:

(a) Deoxyribonucleic acid; and

(b) Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

(15) "Identifying information" includes, but is not limited to, the following information of the gamete donor:

- (a) The first and last name of the person; and
- (b) The age of the person at the time of the donation.

(16) "Man" means a male individual of any age.

(17) "Parent" means an individual who has established a parent-child relationship under RCW 26.26.101.

(18) "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

(19) "Parentage index" means the likelihood of parentage calculated by computing the ratio between:

(a) The likelihood that the tested person is the parent, based on the genetic markers of the tested person, genetic

parent, and child, conditioned on the hypothesis that the tested person is the parent of the child; and

(b) The likelihood that the tested person is not the parent, based on the genetic markers of the tested person, genetic parent, and child, conditioned on the hypothesis that the tested person is not the parent of the child and that the parent is of the same ethnic or racial group as the tested person.

(20) "Physician" means a person licensed to practice medicine in a state.

(21) "Presumed parent" means a person who, by operation of law under RCW 26.26.116, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding.

(22) "Probability of parentage" means the measure, for the ethnic or racial group to which the alleged parent belongs, of the probability that the individual in question is the parent of the child, compared with a random, unrelated person of the same ethnic or racial group, expressed as a percentage incorporating the parentage index and a prior probability.

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

(24) "Signatory" means an individual who authenticates a record and is bound by its terms.

(25) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, any territory or insular possession subject to the jurisdiction of the United States, or an Indian tribe or band, or Alaskan native village, that is recognized by federal law or formally acknowledged by state law.

(26) "Support enforcement agency" means a public official or agency authorized to seek:

(a) Enforcement of support orders or laws relating to the duty of support;

(b) Establishment or modification of child support;

(c) Determination of parentage; or

(d) Location of child support obligors and their income and assets. [2011 c 283 § 1; 2002 c 302 § 102.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(K).

Costs—2011 c 283: "Any action taken by an agency to implement the provisions of this act must be accomplished within existing resources. Any costs incurred by the administrative office of the courts for modifications to the judicial information system as a result of the provisions of this act shall be paid from the judicial information system account." [2011 c 283 § 56.]

Application—2011 c 283: "This act applies to causes of action filed on or after July 22, 2011." [2011 c 283 § 58.]

26.26.021 Scope of act—Choice of law—Surrogate parentage contracts. (1) This chapter applies to determinations of parentage in this state.

(2) The court shall apply the law of this state to adjudicate the parent-child relationship. The applicable law does not depend on:

(a) The place of birth of the child; or

(b) The past or present residence of the child.

(3) This chapter does not create, enlarge, or diminish parental rights or duties under other law of this state.

(4) If a birth results under a surrogate parentage contract that is unenforceable under the law of this state, the parent-child relationship is determined as provided in RCW

26.26.101 through 26.26.116 and applicable case law. [2011 c 283 § 2; 2002 c 302 § 103.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.041 Protection of participants. Proceedings under this chapter are subject to other laws of this state governing the health, safety, privacy, and liberty of a child or other individuals who could be jeopardized by disclosure of identifying information, including the address, telephone number, place of employment, social security number, and the child's day-care facility and school. [2011 c 283 § 3; 2002 c 302 § 105.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.051 Determination of parentage. (1) The provisions relating to determination of parentage apply to determinations of maternity and paternity.

(2) The provisions in this chapter apply to persons in a domestic partnership to the same extent they apply to persons in a marriage, and apply to persons of the same sex who have children together to the same extent they apply to persons of the opposite sex who have children together. [2011 c 283 § 4; 2002 c 302 § 106.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.101 Establishment of parent-child relationship. The parent-child relationship is established between a child and a man or woman by:

(1) The woman's having given birth to the child, except as otherwise provided in RCW 26.26.210 through 26.26.260;

(2) An adjudication of the person's parentage;

(3) Adoption of the child by the person;

(4) An affidavit and physician's certificate in a form prescribed by the department of health wherein the donor of eggs or surrogate gestation carrier sets forth her intent to be legally bound as the parent of a child or children born through assisted reproduction by filing the affidavit and physician's certificate with the registrar of vital statistics within ten days after the date of the child's birth pursuant to RCW 26.26.735;

(5) An un rebutted presumption of the person's parentage of the child under RCW 26.26.116;

(6) The man's having signed an acknowledgment of paternity under RCW 26.26.300 through 26.26.375, unless the acknowledgment has been rescinded or successfully challenged;

(7) The person's having consented to assisted reproduction by his or her spouse or domestic partner under RCW 26.26.700 through 26.26.730 that resulted in the birth of the child; or

(8) A valid surrogate parentage contract, under which the person asserting parentage is an intended parent of the child, as provided in RCW 26.26.210 through 26.26.260. [2011 c 283 § 5; 2002 c 302 § 201.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.106 No discrimination based on marital or domestic partnership status. A child born to parents who

are not married to each other or in a domestic partnership with each other has the same rights under the law as a child born to parents who are married to each other or who are in a domestic partnership with each other. [2011 c 283 § 6; 2002 c 302 § 202.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.111 Consequences of establishment of parentage. Unless parental rights are terminated, the parent-child relationship established under this chapter applies for all purposes, except as otherwise specifically provided by other law of this state. [2011 c 283 § 7; 2002 c 302 § 203.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.116 Presumption of parentage in context of marriage or domestic partnership. (1) In the context of a marriage or a domestic partnership, a person is presumed to be the parent of a child if:

(a) The person and the mother or father of the child are married to each other or in a domestic partnership with each other and the child is born during the marriage or domestic partnership;

(b) The person and the mother or father of the child were married to each other or in a domestic partnership with each other and the child is born within three hundred days after the marriage or domestic partnership is terminated by death, annulment, dissolution, legal separation, or declaration of invalidity;

(c) Before the birth of the child, the person and the mother or father of the child married each other or entered into a domestic partnership with each other in apparent compliance with law, even if the attempted marriage or domestic partnership is, or could be, declared invalid and the child is born during the invalid marriage or invalid domestic partnership or within three hundred days after its termination by death, annulment, dissolution, legal separation, or declaration of invalidity; or

(d) After the birth of the child, the person and the mother or father of the child have married each other or entered into a domestic partnership with each other in apparent compliance with law, whether or not the marriage or domestic partnership is, or could be declared invalid, and the person voluntarily asserted parentage of the child, and:

(i) The assertion is in a record filed with the state registrar of vital statistics;

(ii) The person agreed to be and is named as the child's parent on the child's birth certificate; or

(iii) The person promised in a record to support the child as his or her own.

(2) A person is presumed to be the parent of a child if, for the first two years of the child's life, the person resided in the same household with the child and openly held out the child as his or her own.

(3) A presumption of parentage established under this section may be rebutted only by an adjudication under RCW 26.26.500 through 26.26.630. [2011 c 283 § 8; 2002 c 302 § 204.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.130 Judgment or order determining parent and child relationship—Support judgment and orders—Residential provisions—Custody—Restraining orders—Notice of modification or termination of restraining order. (1) The judgment and order of the court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.

(2) If the judgment and order of the court is at variance with the child's birth certificate, the court shall order that an amended birth certificate be issued.

(3) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the court, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment and order may direct one parent to pay the reasonable expenses of the mother's pregnancy and childbirth. The judgment and order may include a continuing restraining order or injunction. In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(4) The judgment and order shall contain a provision that each party must file with the court and the Washington state child support registry and update as necessary the information required in the confidential information form required by RCW 26.23.050.

(5) Support judgment and orders shall be for periodic payments which may vary in amount. The court may limit the parent's liability for the past support to the child to the proportion of the expenses already incurred as the court deems just. The court shall not limit or affect in any manner the right of nonparties including the state of Washington to seek reimbursement for support and other services previously furnished to the child.

(6) After considering all relevant factors, the court shall order either or both parents to pay an amount determined pursuant to the schedule and standards contained in chapter 26.19 RCW.

(7) On the same basis as provided in chapter 26.09 RCW, the court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party. If a parenting plan or residential schedule was not entered at the time the order establishing parentage was entered, a parent may move the court for entry of a parenting plan or residential schedule:

(a) By filing a motion and proposed parenting plan or residential schedule and providing notice to the other parent and other persons who have residential time with the child pursuant to a court order: PROVIDED, That at the time of filing the motion less than twenty-four months have passed since entry of the order establishing parentage and that the proposed parenting plan or residential schedule does not change the designation of the parent with whom the child spends the majority of time; or

(b) By filing a petition for modification under RCW 26.09.260 or petition to establish a parenting plan, residential schedule, or residential provisions.

(8) In any dispute between the persons claiming parentage of a child and a person or persons who have (a) com-

menced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a court order, or placement by the department of social and health services or by a licensed agency, have had actual custody of the child for a period of one year or more before court action is commenced by the persons claiming parentage, the court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

(9) In entering an order under this chapter, the court may issue any necessary continuing restraining orders, including the restraint provisions of domestic violence protection orders under chapter 26.50 RCW or antiharassment protection orders under chapter 10.14 RCW.

(10) Restraining orders issued under this section restraining or enjoining the person from molesting or disturbing another party, from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(11) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

(12) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system. [2011 c 283 § 9; 2001 c 42 § 5; 2000 c 119 § 10; 1997 c 58 § 947; 1995 c 246 § 31; 1994 sp.s. c 7 § 455. Prior: 1989 c 375 § 23; 1989 c 360 § 18; 1987 c 460 § 56; 1983 1st ex.s. c 41 § 8; 1975-'76 2nd ex.s. c 42 § 14.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

Effective date—Severability—2001 c 42: See notes following RCW 26.09.020.

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

Additional notes found at www.leg.wa.gov

26.26.134 Support orders—Time limit, exception. A court may not order payment for support provided or expenses incurred more than five years prior to the commencement of the action. Any period of time in which the responsible party has concealed himself or herself or avoided the jurisdiction of the court under this chapter shall not be

included within the five-year period. [2011 c 336 § 693; 1983 1st ex.s. c 41 § 11.]

Additional notes found at www.leg.wa.gov

26.26.150 Enforcement of judgments or orders. (1) If existence of the parent and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of the parent may be enforced in the same or other proceedings by the other parent, the child, the state of Washington, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, childbirth, education, support, or funeral, or by any other person, including a private agency, to the extent he or she has furnished or is furnishing these expenses.

(2) The court shall order support payments to be made to the Washington state support registry, or the person entitled to receive the payments under an alternate arrangement approved by the court as provided in RCW 26.23.050(2).

(3) All remedies for the enforcement of judgments apply. [2011 c 283 § 10; 1994 c 230 § 16; 1987 c 435 § 28; 1975-'76 2nd ex.s. c 42 § 16.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

Additional notes found at www.leg.wa.gov

26.26.300 Acknowledgment of paternity. The mother of a child and a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with intent to establish the man's paternity. [2011 c 283 § 11; 2002 c 302 § 301.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.305 Execution of acknowledgment of paternity. (1) An acknowledgment of paternity must:

- (a) Be in a record;
- (b) Be signed under penalty of perjury by the mother and by the man seeking to establish his paternity;
- (c) State that the child whose paternity is being acknowledged:
 - (i) Does not have a presumed father, or has a presumed father whose full name is stated; and
 - (ii) Does not have another acknowledged or adjudicated father;
- (d) State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the genetic testing; and
- (e) State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two years, except as provided in RCW 26.26.330.

(2) An acknowledgment of paternity is void if it:

- (a) States that another man is a presumed father, unless a denial of paternity signed by the presumed father is filed with the state registrar of vital statistics;
- (b) States that another man is an acknowledged or adjudicated father; or

(c) Falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child.

(3) A presumed father may sign an acknowledgment of paternity. [2011 c 283 § 12; 2002 c 302 § 302.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.310 Denial of paternity. A presumed father of a child may sign a denial of his paternity. The denial is valid only if:

(1) An acknowledgment of paternity signed by another man is filed under RCW 26.26.320;

(2) The denial is in a record, and is signed under penalty of perjury; and

(3) The presumed father has not previously:

(a) Acknowledged his paternity, unless the previous acknowledgment has been rescinded under RCW 26.26.330 or successfully challenged under RCW 26.26.335; or

(b) Been adjudicated to be the father of the child. [2011 c 283 § 13; 2002 c 302 § 303.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.315 Rules for acknowledgment and denial of paternity. (1) An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts, and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

(2) An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

(3) Subject to subsection (1) of this section, an acknowledgment and denial of paternity, if any, take effect on the birth of the child or the filing of the document with the state registrar of vital statistics, whichever occurs later.

(4) An acknowledgment or denial of paternity signed by a minor is valid if it is otherwise in compliance with this chapter. An acknowledgment or denial of paternity signed by a minor may be rescinded under RCW 26.26.330. [2011 c 283 § 14; 2002 c 302 § 304.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.320 Effect of acknowledgment or denial of paternity. (1) Except as otherwise provided in RCW 26.26.330 and 26.26.335, a valid acknowledgment of paternity filed with the state registrar of vital statistics is equivalent to an adjudication of parentage of a child and confers upon the acknowledged father all of the rights and duties of a parent.

(2) Except as otherwise provided in RCW 26.26.330 and 26.26.335, a valid denial of paternity filed with the state registrar of vital statistics in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all of the rights and duties of a parent. [2011 c 283 § 15; 2002 c 302 § 305.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.330 Proceeding for rescission of acknowledgment or denial of paternity. (1) Except as provided in subsection (2) of this section, a signatory may rescind an acknowledgment or denial of paternity by commencing a court proceeding to rescind before the earlier of:

(a) Sixty days after the effective date of the acknowledgment or denial, as provided in RCW 26.26.315; or

(b) The date of the first hearing in a proceeding to which the signatory is a party before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

(2) If the signatory to an acknowledgment or denial of paternity was a minor when he signed the acknowledgment or denial, the signatory may rescind the acknowledgment or denial of paternity by commencing a court proceeding to rescind on or before the signatory's nineteenth birthday. [2011 c 283 § 16; 2004 c 111 § 1; 2002 c 302 § 307.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.335 Challenge after expiration of time for rescission of acknowledgment or denial of paternity. (1) After the period for rescission under RCW 26.26.330 has expired, a signatory of an acknowledgment or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:

(a) On the basis of fraud, duress, or material mistake of fact; and

(b) Within four years after the acknowledgment or denial is filed with the state registrar of vital statistics. In actions commenced more than two years after the birth of the child, the child must be made a party to the action.

(2) A party challenging an acknowledgment or denial of paternity has the burden of proof. [2011 c 283 § 17; 2002 c 302 § 308.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.340 Procedure for rescission or challenge of acknowledgment or denial of paternity. (1) Every signatory to an acknowledgment of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

(2) For the purpose of rescission of, or challenge to, an acknowledgment or denial of paternity, a signatory submits to personal jurisdiction of this state by signing the acknowledgment or denial, effective upon the filing of the document with the state registrar of vital statistics.

(3) Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment or denial of paternity, the court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

(4) A proceeding to rescind or to challenge an acknowledgment or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under RCW 26.26.500 through 26.26.630.

(5) At the conclusion of a proceeding to rescind or challenge an acknowledgment or denial of paternity, the court shall order the state registrar of vital statistics to amend the

birth record of the child, if appropriate. [2011 c 283 § 18; 2002 c 302 § 309.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.360 Release of information. The state registrar of vital statistics may release information relating to the acknowledgment or denial of paternity to: (1) A signatory of the acknowledgment or denial; (2) the courts of this or any other state; (3) the agencies of this or any other state operating a child support program under Title IV-D of the social security act; and (4) the agencies of this or any other state involved in a dependency determination for a child named in the acknowledgment or denial of paternity. [2011 c 283 § 19; 2002 c 302 § 313.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.375 Judicial proceedings. (1) After the period for rescission of an acknowledgment of paternity provided in RCW 26.26.330 has passed, a parent executing an acknowledgment of paternity of the child named therein may commence a judicial proceeding for:

(a) Making residential provisions or a parenting plan with regard to the minor child on the same basis as provided in chapter 26.09 RCW; or

(b) Establishing a child support obligation under chapter 26.19 RCW and maintaining health insurance coverage under RCW 26.09.105.

(2) Pursuant to RCW 26.09.010(3), a proceeding authorized by this section shall be titled "In re the parenting and support of..."

(3) Before the period for a challenge to the acknowledgment or denial of paternity has elapsed under RCW 26.26.335, the petitioner must specifically allege under penalty of perjury, to the best of the petitioner's knowledge, that: (a) No man other than the man who executed the acknowledgment of paternity is the father of the child; (b) there is not currently pending a proceeding to adjudicate the parentage of the child or that another man is adjudicated the child's father; and (c) the petitioner has provided notice of the proceeding to any other men who have claimed parentage of the child. Should the respondent or any other person appearing in the action deny the allegations, a permanent parenting plan or residential schedule may not be entered for the child without the matter being converted to a proceeding to challenge the acknowledgment of paternity under RCW 26.26.335 and 26.26.340. A copy of the acknowledgment of paternity or the birth certificate issued by the state in which the child was born must be filed with the petition or response. The court may convert the matter to a proceeding to challenge the acknowledgment on its own motion. [2011 c 283 § 20; 2002 c 302 § 316.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.400 Genetic testing—Application of RCW 26.26.405 through 26.26.450. RCW 26.26.405 through 26.26.450 govern genetic testing of an individual to determine parentage, whether the individual:

(1) Voluntarily submits to testing; or

(2) Is tested pursuant to an order of the court or a support enforcement agency. [2011 c 283 § 21; 2002 c 302 § 401.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.405 Order for genetic testing. (1) Except as otherwise provided in this section and RCW 26.26.410 through 26.26.630, the court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:

(a) Alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or

(b) Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.

(2) A support enforcement agency may order genetic testing only if there is no presumed or adjudicated parent and no acknowledged father.

(3) If a request for genetic testing of a child is made before birth, the court or support enforcement agency may not order in utero testing.

(4) If two or more persons are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

(5) This section does not apply when the child was conceived through assisted reproduction. [2011 c 283 § 22; 2002 c 302 § 402.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.410 Requirements for genetic testing. (1) Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

(a) The American association of blood banks, or a successor to its functions;

(b) The American society for histocompatibility and immunogenetics, or a successor to its functions; or

(c) An accrediting body designated by the United States secretary of health and human services.

(2) A specimen used in genetic testing may consist of one or more samples or a combination of samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

(3) Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of parentage. If there is disagreement as to the testing laboratory's choice, the following rules apply:

(a) The individual objecting may require the testing laboratory, within thirty days after receipt of the report of the test, to recalculate the probability of parentage using an ethnic or racial group different from that used by the laboratory.

(b) The individual objecting to the testing laboratory's initial choice shall:

(i) If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the

requested frequencies compiled in a manner recognized by accrediting bodies; or

(ii) Engage another testing laboratory to perform the calculations.

(c) The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

(4) If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a person as the parent of a child under RCW 26.26.420, an individual who has been tested may be required to submit to additional genetic testing. [2011 c 283 § 23; 2002 c 302 § 403.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.420 Genetic testing results—Rebuttal. (1) Under this chapter, a person is rebuttably identified as the parent of a child if the genetic testing complies with this section and RCW 26.26.400 through 26.26.415 and 26.26.425 through 26.26.450 and the results disclose that:

(a) The person has at least a ninety-nine percent probability of parentage, using a prior probability of 0.50, as calculated by using the combined parentage index obtained in the testing; and

(b) A combined parentage index of at least one hundred to one.

(2) A person identified under subsection (1) of this section as the parent of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this section and RCW 26.26.400 through 26.26.415 and 26.26.425 through 26.26.450 which:

(a) Excludes the person as a genetic parent of the child; or

(b) Identifies another person as the parent of the child.

(3) Except as otherwise provided in RCW 26.26.445, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic parent.

(4) This section does not apply when the child was conceived through assisted reproduction. [2011 c 283 § 24; 2002 c 302 § 405.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.425 Costs of genetic testing. (1) Subject to assessment of costs under RCW 26.26.500 through 26.26.630, the cost of initial genetic testing must be advanced:

(a) By a support enforcement agency in a proceeding in which the support enforcement agency is providing services;

(b) By the individual who made the request;

(c) As agreed by the parties; or

(d) As ordered by the court.

(2) In cases in which the cost is advanced by the support enforcement agency, the agency may seek reimbursement from a person who is rebuttably identified as the parent. [2011 c 283 § 25; 2002 c 302 § 406.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.430 Additional genetic testing. (1) The court or the support enforcement agency shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a person as the parent of the child under RCW 26.26.420, the court or agency may not order additional testing unless the party provides advance payment for the testing.

(2) This section does not apply when the child was conceived through assisted reproduction. [2011 c 283 § 26; 2002 c 302 § 407.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.435 Genetic testing when specimen not available. (1) If a genetic testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the court considers to be just, a court may order the following individuals to submit specimens for genetic testing:

- (a) The parents of the man;
- (b) Brothers and sisters of the man;
- (c) Other children of the man and their mothers; and
- (d) Other relatives of the man necessary to complete genetic testing.

(2) If a specimen from the mother of a child is not available for genetic testing, the court may order genetic testing to proceed without a specimen from the mother.

(3) Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

(4) This section does not apply when the child was conceived through assisted reproduction. [2011 c 283 § 27; 2002 c 302 § 408.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.445 Genetic testing—Identical brothers. (1) The court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

(2) If each brother satisfies the requirements as the identified father of the child under RCW 26.26.420 without consideration of another identical brother being identified as the father of the child, the court may rely on nongenetic evidence to adjudicate which brother is the father of the child. [2011 c 283 § 28; 2002 c 302 § 410.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.505 Standing to maintain proceeding to adjudicate parentage. Subject to RCW 26.26.300 through 26.26.375, 26.26.530, and 26.26.540, a proceeding to adjudicate parentage may be maintained by:

- (1) The child;
- (2) The person who has established a parent-child relationship with the child;
- (3) A person whose parentage of the child is to be adjudicated;
- (4) The division of child support;

(5) An authorized adoption agency or licensed child-placing agency;

(6) A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor; or

(7) An intended parent under a surrogate parentage contract, as provided in RCW 26.26.210 through 26.26.260. [2011 c 283 § 29; 2002 c 302 § 502.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.510 Parties to proceeding to adjudicate parentage. The following individuals must be joined as parties in a proceeding to adjudicate parentage:

(1) The parent of the child who has established a parent-child relationship with the child;

(2) A person whose parentage of the child is to be adjudicated;

(3) An intended parent under a surrogate parentage contract, as provided in RCW 26.26.210 through 26.26.260; and

(4) The child if required under RCW 26.26.530, 26.26.540, or 26.26.720. [2011 c 283 § 30; 2002 c 302 § 503.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.525 Proceeding to adjudicate parentage—No time limitation: Child having no presumed or adjudicated second parent and no acknowledged father. A proceeding to adjudicate the parentage of a child having no presumed or adjudicated second parent and no acknowledged father may be commenced at any time during the life of the child, even after:

(1) The child becomes an adult; or

(2) An earlier proceeding to adjudicate parentage has been dismissed based on the application of a statute of limitation then in effect. [2011 c 283 § 31; 2002 c 302 § 506.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.530 Proceeding to adjudicate parentage—Time limitation: Child having presumed parent. (1) Except as otherwise provided in subsection (2) of this section, a proceeding brought by a presumed parent, the person with a parent-child relationship with the child, or another individual to adjudicate the parentage of a child having a presumed parent must be commenced not later than four years after the birth of the child. If an action is commenced more than two years after the birth of the child, the child must be made a party to the action.

(2) A proceeding seeking to disprove the parent-child relationship between a child and the child's presumed parent may be maintained at any time if the court determines that the presumed parent and the person who has a parent-child relationship with the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception and the presumed parent never held out the child as his or her own. [2011 c 283 § 32; 2002 c 302 § 507.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.535 Proceeding to adjudicate parentage—

Authority to deny genetic testing. (1) In a proceeding to adjudicate parentage under circumstances described in RCW 26.26.530 or in RCW 26.26.540, a court may deny a motion seeking an order for genetic testing of the mother or father, the child, and the presumed or acknowledged father if the court determines that:

(a)(i) The conduct of the mother or father or the presumed or acknowledged parent estops that party from denying parentage; and

(ii) It would be inequitable to disprove the parent-child relationship between the child and the presumed or acknowledged parent; or

(b) The child was conceived through assisted reproduction.

(2) In determining whether to deny a motion to seek an order for genetic testing under subsection (1)(a) of this section, the court shall consider the best interest of the child, including the following factors:

(a) The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged parent was placed on notice that he or she might not be the genetic parent;

(b) The length of time during which the presumed or acknowledged parent has assumed the role of parent of the child;

(c) The facts surrounding the presumed or acknowledged parent's discovery of his or her possible nonparentage;

(d) The nature of the relationship between the child and the presumed or acknowledged parent;

(e) The age of the child;

(f) The harm that may result to the child if parentage is successfully disproved;

(g) The nature of the relationship between the child and any alleged parent;

(h) The extent to which the passage of time reduces the chances of establishing the parentage of another person and a child support obligation in favor of the child; and

(i) Other factors that may affect the equities arising from the disruption of the parent-child relationship between the child and the presumed or acknowledged parent or the chance of other harm to the child.

(3) In a proceeding involving the application of this section, a minor or incapacitated child must be represented by a guardian ad litem.

(4) A denial of a motion seeking an order for genetic testing under subsection (1)(a) of this section must be based on clear and convincing evidence.

(5) If the court denies a motion seeking an order for genetic testing under subsection (1)(a) of this section, it shall issue an order adjudicating the presumed or acknowledged parent to be the parent of the child. [2011 c 283 § 33; 2002 c 302 § 508.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.540 Proceeding to adjudicate parentage—

Time limitation: Child having acknowledged father or adjudicated parent. (1) If a child has an acknowledged father, a signatory to the acknowledgment or denial of paternity must commence any proceeding seeking to rescind the

acknowledgment or denial or challenge the paternity of the child only within the time allowed under RCW 26.26.330 or 26.26.335.

(2) If a child has an acknowledged father or an adjudicated parent, an individual, other than the child, who is neither a signatory to the acknowledgment nor a party to the adjudication and who seeks an adjudication of parentage of the child must commence a proceeding not later than four years after the effective date of the acknowledgment or adjudication. If an action is commenced more than two years after the birth of the child, the child must be made a party to the action.

(3) A proceeding under this section is subject to RCW 26.26.535. [2011 c 283 § 34; 2002 c 302 § 509.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.545 Joinder of proceedings. (1) Except as otherwise provided in subsection (2) of this section, a proceeding to adjudicate parentage may be joined with a proceeding for: Adoption or termination of parental rights under chapter 26.33 RCW; determination of a parenting plan, child support, annulment, dissolution of marriage, dissolution of a domestic partnership, or legal separation under chapter 26.09 or 26.19 RCW; or probate or administration of an estate under chapter 11.48 or 11.54 RCW, or other appropriate proceeding.

(2) A respondent may not join a proceeding described in subsection (1) of this section with a proceeding to adjudicate parentage brought under chapter 26.21A RCW. [2011 c 283 § 35; 2002 c 302 § 510.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.550 Proceeding to adjudicate parentage—

Before birth. A proceeding to adjudicate parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

(1) Service of process;

(2) Discovery;

(3) Except as prohibited by RCW 26.26.405, collection of specimens for genetic testing; and

(4) Temporary orders authorized under RCW 26.26.590. [2011 c 283 § 36; 2002 c 302 § 511.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.555 Child as party—Representation. (1)

Unless specifically required under other provisions of this chapter, a minor child is a permissible party, but is not a necessary party to a proceeding under RCW 26.26.500 through 26.26.630.

(2) If a minor or incapacitated child is a party, or if the court finds that the interests of the child are not adequately represented, the court shall appoint a guardian ad litem to represent the child, subject to RCW 74.20.310. A parent of the child may not represent the child as guardian or in any other capacity. [2011 c 283 § 37; 2002 c 302 § 512.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.570 Proceeding to adjudicate parentage—Admissibility of results of genetic testing—Expenses. (1) Except as otherwise provided in subsection (3) of this section, a record of a genetic testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

(a) Voluntarily or under an order of the court or a support enforcement agency; or

(b) Before or after the commencement of the proceeding.

(2) A party objecting to the results of genetic testing may call one or more genetic testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.

(3) If a child has a presumed or adjudicated parent or an acknowledged father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

(a) With the consent of both the person with a parent-child relationship with the child and the presumed or adjudicated parent or an acknowledged father; or

(b) Under an order of the court under RCW 26.26.405.

(4) Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child that are furnished to the adverse party not less than ten days before the date of a hearing are admissible to establish:

(a) The amount of the charges billed; and

(b) That the charges were reasonable, necessary, and customary. [2011 c 283 § 38; 2002 c 302 § 521.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.575 Proceeding to adjudicate parentage—Consequences of declining genetic testing. (1) An order for genetic testing is enforceable by contempt.

(2) If an individual whose paternity is being determined declines to submit to genetic testing ordered by the court, the court for that reason may adjudicate parentage contrary to the position of that individual.

(3) Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the court may order the testing of the child and every man whose paternity is being adjudicated.

(4) This section does not apply when the child was conceived through assisted reproduction. [2011 c 283 § 39; 2002 c 302 § 522.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.585 Proceeding to adjudicate parentage—Admission of paternity authorized. (1) A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

(2) If the court finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the court shall issue an order adjudicating the child to be the child of the man admitting paternity. [2011 c 283 § 40; 2002 c 302 § 523.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.590 Proceeding to adjudicate parentage—Temporary order. This section applies to any proceeding under RCW 26.26.500 through 26.26.630.

(1) The court shall issue a temporary order for support of a child if the individual ordered to pay support:

(a) Is a presumed parent of the child;

(b) Is petitioning to have his or her parentage adjudicated or has admitted parentage in pleadings filed with the court;

(c) Is identified as the father through genetic testing under RCW 26.26.420;

(d) Has declined to submit to genetic testing but is shown by clear and convincing evidence to be the father of the child; or

(e) Is a person who has established a parent-child relationship with the child.

(2) A temporary order may, on the same basis as provided in chapter 26.09 RCW, make residential provisions with regard to minor children of the parties, except that a parenting plan is not required unless requested by a parent.

(3) Any party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any party from:

(a) Molesting or disturbing the peace of another party;

(b) Going onto the grounds of or entering the home, workplace, or school of another party or the day care or school of any child;

(c) Knowingly coming within, or knowingly remaining within, a specified distance from a specified location; and

(d) Removing a child from the jurisdiction of the court.

(4) Either party may request a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW on a temporary basis. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080. Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time.

(5) Restraining orders issued under this section restraining or enjoining the person from molesting or disturbing another party, or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(6) The court shall order that any temporary restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

(7) If a restraining order issued pursuant to this section is modified or terminated, the clerk of the court shall notify the law enforcement agency specified in the order on or before the next judicial day. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from any computer-based criminal intelligence system.

(8) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(9) The court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances. In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(10) A temporary order, temporary restraining order, or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified;

(c) Terminates when the final order is entered or when the petition is dismissed; and

(d) May be entered in a proceeding for the modification of an existing order.

(11) A support debt owed to the state for public assistance expenditures which has been charged against a party pursuant to RCW 74.20A.040 and/or 74.20A.055 shall not be merged in, or otherwise extinguished by, the final decree or order, unless the office of support enforcement has been given notice of the final proceeding and an opportunity to present its claim for the support debt to the court and has failed to file an affidavit as provided in this subsection. Notice of the proceeding shall be served upon the office of support enforcement personally, or by certified mail, and shall be given no fewer than thirty days prior to the date of the final proceeding. An original copy of the notice shall be filed with the court either before service or within a reasonable time thereafter. The office of support enforcement may present its claim, and thereby preserve the support debt, by filing an affidavit setting forth the amount of the debt with the court, and by mailing a copy of the affidavit to the parties or their attorney prior to the date of the final proceeding. [2011 c 283 § 41; 2002 c 302 § 524.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.600 Rules for adjudication of parentage. The court shall apply the following rules to adjudicate the parentage of a child:

(1) Except as provided in subsection (5) of this section, the parentage of a child having a presumed or adjudicated parent or an acknowledged father may be disproved only by admissible results of genetic testing excluding that person as the parent of the child or identifying another man as the father of the child.

(2) Unless the results of genetic testing are admitted to rebut other results of genetic testing, the man identified as the father of the child under RCW 26.26.420 must be adjudicated the father of the child.

(3) If the court finds that genetic testing under RCW 26.26.420 neither identifies nor excludes a man as the father of a child, the court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.

(4) Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child.

(5) Subsections (1) through (4) of this section do not apply when the child was conceived through assisted reproduction. The parentage of a child conceived through assisted reproduction may be disproved only by admissible evidence showing the intent of the presumed, acknowledged, or adjudicated parent and the other parent. [2011 c 283 § 42; 2002 c 302 § 531.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.620 Dismissal for want of prosecution. The court may issue an order dismissing a proceeding commenced under this chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice. [2011 c 283 § 43; 2002 c 302 § 535.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.625 Order adjudicating parentage. (1) The court shall issue an order adjudicating whether a person alleged or claiming to be the parent is the parent of the child.

(2) An order adjudicating parentage must identify the child by name and age.

(3) Except as otherwise provided in subsection (4) of this section, the court may assess filing fees, reasonable attorneys' fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under this section and RCW 26.26.500 through 26.26.620 and 26.26.630. The court may award attorneys' fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.

(4) The court may not assess fees, costs, or expenses against the support enforcement agency of this state or another state, except as provided by other law.

(5) On request of a party and for good cause shown, the court may order that the name of the child be changed.

(6) If the order of the court is at variance with the child's birth certificate, the court shall order the state registrar of vital statistics to issue an amended birth certificate. [2011 c 283 § 44; 2002 c 302 § 536.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.630 Binding effect of determination of parentage. (1) Except as otherwise provided in subsection (2) of this section, a determination of parentage is binding on:

(a) All signatories to an acknowledgment or denial of paternity as provided in RCW 26.26.300 through 26.26.375; and

(b) All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of RCW 26.21A.100.

(2) A child is not bound by a determination of parentage under this chapter unless:

(a) The determination was based on an unrescinded acknowledgment of paternity and the acknowledgment of paternity is consistent with the results of the genetic testing;

(b) The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown, or in the case of a child conceived through assisted reproduction, the adjudication of parentage was based on evidence showing the intent of the parents; or

(c) The child was a party or was represented in the proceeding determining parentage by a guardian ad litem.

(3) In a proceeding to dissolve a marriage or domestic partnership, the court is deemed to have made an adjudication of the parentage of a child if the court acts under circumstances that satisfy the jurisdictional requirements of RCW 26.21A.100, and the final order:

(a) Expressly identifies a child as a "child of the marriage," "issue of the marriage," "child of the domestic partnership," "issue of the domestic partnership," or similar words indicating that the spouses in the marriage or domestic partners in the domestic partnership are the parents of the child; or

(b) Provides for support of the child by one or both of the spouses or domestic partners unless parentage is specifically disclaimed in the order.

(4) Except as otherwise provided in subsection (2) of this section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

(5) A party to an adjudication of parentage may challenge the adjudication only under law of this state relating to appeal, vacation of judgments, or other judicial review. [2011 c 283 § 45; 2002 c 302 § 537.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.705 Child of assisted reproduction—Parental status of donor. A donor is not a parent of a child conceived by means of assisted reproduction, unless otherwise agreed in a signed record by the donor and the person or persons intending to be parents of a child conceived through assisted reproduction. [2011 c 283 § 46; 2002 c 302 § 602.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.710 Parentage of child of assisted reproduction. A person who provides gametes for, or consents in a signed record to assisted reproduction with another person, with the intent to be the parent of the child born, is the parent of the resulting child. [2011 c 283 § 47; 2002 c 302 § 603.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.715 Consent to assisted reproduction. (1) Consent by a couple who intend to be parents of a child conceived by assisted reproduction must be in a record signed by both persons. This requirement does not apply to a donor.

(2) Failure of the person to sign a consent required by subsection (1) of this section, before or after birth of the child, does not preclude a finding of parentage if the persons resided together in the same household with the child and openly held out the child as their own. [2011 c 283 § 48; 2002 c 302 § 604.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.720 Child of assisted reproduction—Limitation on dispute of parentage. (1) Except as otherwise provided in subsection (2) of this section, a spouse or domestic partner of a woman who gives birth to a child by means of assisted reproduction, or a spouse or domestic partner of a man who has a child by means of assisted reproduction, may not challenge his or her parentage of the child unless:

(a) Within four years after learning of the birth of the child the person commences a proceeding to adjudicate his or her parentage. In actions commenced more than two years after the birth of the child, the child must be made a party to the action; and

(b) The court finds that the person did not consent to the assisted reproduction, before or after birth of the child.

(2) A proceeding to adjudicate parentage may be maintained at any time if the court determines that:

(a) The spouse or domestic partner did not provide gametes for, or before or after the birth of the child consent to, assisted reproduction by his or her spouse or domestic partner;

(b) The spouse or domestic partner and the parent of the child have not cohabited since the probable time of assisted reproduction; and

(c) The spouse or domestic partner never openly held out the child as his or her own.

(3) The limitation provided in this section applies to a marriage or domestic partnership declared invalid after assisted reproduction. [2011 c 283 § 49; 2002 c 302 § 605.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.725 Child of assisted reproduction—Effect of dissolution of marriage or domestic partnership. (1) If a marriage or domestic partnership is dissolved before placement of eggs, sperm, or an embryo, the former spouse or former domestic partner is not a parent of the resulting child unless the former spouse or former domestic partner con-

sented in a signed record that if assisted reproduction were to occur after a dissolution, the former spouse or former domestic partner would be a parent of the child.

(2) The consent of the former spouse or former domestic partner to assisted reproduction may be withdrawn by that individual in a record at any time before placement of eggs, sperm, or embryos. An individual who withdraws consent under this section is not a parent of the resulting child. [2011 c 283 § 50; 2002 c 302 § 606.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.730 Child of assisted reproduction—Parental status of deceased individual. If an individual who consented in a record to be a parent by assisted reproduction dies before placement of eggs, sperm, or an embryo, the deceased individual is not a parent of the resulting child unless the deceased individual consented in a signed record that if assisted reproduction were to occur after death, the deceased individual would be a parent of the child. [2011 c 283 § 51; 2002 c 302 § 607.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.735 Child of assisted reproduction—Effect of agreement between egg donor and woman who gives birth. The donor of eggs provided to a licensed physician for use in assisted reproduction for the purpose of attempting to achieve a pregnancy in a woman other than the donor is treated in law as if she were not the parent of a child thereafter conceived and born unless the donor and the woman who gives birth to a child as a result of the assisted reproduction agree in writing that the donor is to be a parent. RCW 26.26.705 does not apply in such case. A woman who gives birth to a child conceived through assisted reproduction under the supervision and with the assistance of a licensed physician is treated in law as if she were the parent of the child unless an agreement in writing signed by an egg donor and the woman giving birth to the child states otherwise. An agreement pursuant to this section must be in writing and signed by the egg donor and the woman who gives birth to the child and any other intended parent of the child. The physician shall certify the parties' signatures and the date of the egg harvest, identify the subsequent medical procedures undertaken, and identify the intended parents. The agreement, including the affidavit and certification, must be filed with the registrar of vital statistics, where it must be kept confidential and in a sealed file. [2011 c 283 § 52; 2002 c 302 § 608.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.750 Identifying information—Requirement to provide—Disclosure. (1) A person who donates gametes to a fertility clinic in Washington to be used in assisted reproduction shall provide, at a minimum, his or her identifying information and medical history to the fertility clinic. The fertility clinic shall keep the identifying information and medical history of its donors and shall disclose the information as provided under subsection (2) of this section.

(2)(a) A child conceived through assisted reproduction who is at least eighteen years old shall be provided, upon his or her request, access to identifying information of the donor who provided gametes for the assisted reproduction that resulted in the birth of the child, unless the donor has signed an affidavit of nondisclosure with the fertility clinic that provided the gamete for assisted reproduction.

(b) Regardless of whether the donor signed an affidavit of nondisclosure, a child conceived through assisted reproduction who is at least eighteen years old shall be provided, upon his or her request, access to the nonidentifying medical history of the donor who provided gametes for the assisted reproduction that resulted in the birth of the child. [2011 c 283 § 53.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.903 Uniformity of application and construction—2002 c 302. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it and to the intent that the act apply to persons of the same sex who have children together to the same extent the act applies to persons of the opposite sex who have children together. [2011 c 283 § 54; 2002 c 302 § 709.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

26.26.911 Short title—2002 c 302. This act may be known and cited as the uniform parentage act of 2002. [2011 c 283 § 55; 2002 c 302 § 101.]

Costs—Application—2011 c 283: See notes following RCW 26.26.011.

Chapter 26.28 RCW AGE OF MAJORITY

Sections

26.28.030	Contracts of minors—Disaffirmance.
26.28.040	Disaffirmance barred in certain cases.
26.28.050	Satisfaction of minor's contract for services.
26.28.070	Certain types of employment prohibited—Penalty.

26.28.030 Contracts of minors—Disaffirmance. A minor is bound, not only by contracts for necessities, but also by his or her other contracts, unless he or she disaffirms them within a reasonable time after he or she attains his or her majority, and restores to the other party all money and property received by him or her by virtue of the contract, and remaining within his or her control at any time after his or her attaining his or her majority. [2011 c 336 § 694; 1866 p 92 § 2; RRS § 5829.]

26.28.040 Disaffirmance barred in certain cases. No contract can be thus disaffirmed in cases where on account of the minor's own misrepresentations as to his or her majority, or from his or her having engaged in business as an adult, the other party had good reasons to believe the minor capable of contracting. [2011 c 336 § 695; 1866 p 93 § 3; RRS § 5830.]

26.28.050 Satisfaction of minor's contract for services. When a contract for the personal services of a minor has been made with him or her alone, and those services are afterwards performed, payment made therefor to such minor in accordance with the terms of the contract, is a full satisfaction for those services, and the parents or guardian cannot recover therefor. [2011 c 336 § 696; 1866 p 93 § 4; RRS § 5831.]

26.28.070 Certain types of employment prohibited—Penalty. Every person who shall employ, or cause to be employed, exhibit or have in his or her custody for exhibition or employment any minor actually or apparently under the age of eighteen years; and every parent, relative, guardian, employer, or other person having the care, custody, or control of any such minor, who shall in any way procure or consent to the employment of such minor:

- (1) In begging, receiving alms, or in any mendicant occupation; or,
- (2) In any indecent or immoral exhibition or practice; or,
- (3) In any practice or exhibition dangerous or injurious to life, limb, health, or morals; or,
- (4) As a messenger for delivering letters, telegrams, packages, or bundles, to any known house of prostitution or assignation;

Shall be guilty of a misdemeanor. [2011 c 336 § 697; 1909 c 249 § 194; RRS § 2446.]

Juvenile courts and juvenile offenders: Title 13 RCW.

Chapter 26.30 RCW

UNIFORM MINOR STUDENT CAPACITY TO BORROW ACT

Sections

26.30.020 Minors—Contracts—Educational purposes—Enforceability.

26.30.020 Minors—Contracts—Educational purposes—Enforceability. Any written obligation signed by a minor sixteen or more years of age in consideration of an educational loan received by him or her from any person is enforceable as if he or she were an adult at the time of execution, but only if prior to the making of the educational loan an educational institution has certified in writing to the person making the educational loan that the minor is enrolled, or has been accepted for enrollment, in the educational institution. [2011 c 336 § 698; 1970 ex.s. c 4 § 2.]

Contracts of minors, disaffirmance: RCW 26.28.030.

Chapter 26.33 RCW

ADOPTION

Sections

26.33.040 Petitions—Application of federal Indian child welfare act—Requirements—Federal servicemembers civil relief act statement and findings.

26.33.070 Appointment of guardian ad litem—When required—Payment of fees.

26.33.240 Petition for adoption—Hearing—Notice—Disposition.

26.33.040 Petitions—Application of federal Indian child welfare act—Requirements—Federal servicemem-

[2011 RCW Supp—page 462]

bers civil relief act statement and findings. (1)(a) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in RCW 13.38.040. If the child is an Indian child, chapter 13.38 RCW shall apply.

(b) Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.38 RCW does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.38 RCW does apply, the decree or order must also contain a finding that all notice, consent, and evidentiary requirements under the federal Indian child welfare act, chapter 13.38 RCW, and this section have been satisfied.

(c) In proceedings under this chapter, the adoption facilitator shall file a sworn statement documenting efforts to determine whether an Indian child is involved.

(d) Whenever the court or the petitioning party knows or has reason to know that an Indian child is involved in any termination, relinquishment, or placement proceeding under this chapter, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(e) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.

(f) No termination, relinquishment, or placement proceeding shall be held until at least ten days after receipt of notice by the tribe. If the tribe requests, the court shall grant the tribe up to twenty additional days to prepare for such proceeding.

(2) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the federal servicemembers civil relief act of 2004, 50 U.S.C. Sec. 501 et seq. applies to the proceeding. Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal servicemembers civil relief act of 2004 does or does not apply. [2011 c 309 § 32; 2004 c 64 § 2; 1991 c 136 § 1; 1984 c 155 § 4.]

26.33.070 Appointment of guardian ad litem—When required—Payment of fees. (1) The court shall appoint a guardian ad litem for any parent or alleged father under eighteen years of age in any proceeding under this chapter. The court may appoint a guardian ad litem for a child adoptee or any incompetent party in any proceeding under this chapter. The guardian ad litem for a parent or alleged father, in addition to determining what is in the best interest of the party, shall make an investigation and report to the court concerning whether any written consent to adoption or petition for relinquishment signed by the parent or alleged father was signed voluntarily and with an understanding of the consequences of

the action. If the child to be relinquished is a dependent child under chapter 13.34 RCW and the minor parent is represented by an attorney or guardian ad litem in the dependency proceeding, the court may rely on the minor parent's dependency court attorney or guardian ad litem to make a report to the court as provided in this subsection.

(2) The court in the county in which a petition is filed shall direct who shall pay the fees of a guardian ad litem or attorney appointed under this chapter and shall approve the payment of the fees. If the court orders the parties to pay the fees of the guardian ad litem, the fees must be established pursuant to the procedures in RCW 26.12.183. [2011 c 292 § 3; 1984 c 155 § 7.]

26.33.240 Petition for adoption—Hearing—Notice—Disposition. (1) After the reports required by RCW 26.33.190 and 26.33.200 have been filed, the court shall schedule a hearing on the petition for adoption upon request of the petitioner for adoption. Notice of the date, time, and place of hearing shall be given to the petitioner and any person or agency whose consent to adoption is required under RCW 26.33.160, unless the person or agency has waived in writing the right to receive notice of the hearing. If the child is an Indian child, notice shall also be given to the child's tribe. Notice shall be given in the manner prescribed by RCW 26.33.310.

(2) Notice of the adoption hearing shall also be given to any person who or agency which has prepared a preplacement report. The notice shall be given in the manner prescribed by RCW 26.33.230.

(3) If the court determines, after review of the petition, preplacement and post-placement reports, and other evidence introduced at the hearing, that all necessary consents to adoption are valid or have been dispensed with pursuant to RCW 26.33.170 and that the adoption is in the best interest of the adoptee, and, in the case of an adoption of an Indian child, that the adoptive parents are within the placement preferences of RCW 13.38.180 or good cause to the contrary has been shown on the record, the court shall enter a decree of adoption pursuant to RCW 26.33.250.

(4) If the court determines the petition should not be granted because the adoption is not in the best interest of the child, the court shall make appropriate provision for the care and custody of the child. [2011 c 309 § 33; 1987 c 170 § 8; 1984 c 155 § 23.]

Additional notes found at www.leg.wa.gov

Chapter 26.40 RCW CHILDREN WITH DISABILITIES

Sections

26.40.080 Health and welfare of committed child—State and co-custodian responsibilities.

26.40.080 Health and welfare of committed child—State and co-custodian responsibilities. It shall be the responsibility of the state and the appropriate departments and agencies thereof to discover methods and procedures by which the mental and/or physical health of the child in custody may be improved and, with the consent of the co-custo-

dians, to apply those methods and procedures. The co-custodians other than the state shall have no financial responsibility for the child committed to their co-custody except as they may in written agreement with the state accept such responsibility. At any time after the commitment of such child they may inquire into his or her well-being, and the state and any of its agencies may do nothing with respect to the child that would in any way affect his or her mental or physical health without the consent of the co-custodians. The legal status of the child may not be changed without the consent of the co-custodians. If it appears to the state as co-custodian of a child that the health and/or welfare of such child is impaired or jeopardized by the failure of the co-custodians other than the state to consent to the application of certain methods and procedures with respect to such child, the state through its proper department or agency may petition the court for an order to proceed with such methods and procedures. Upon the filing of such petition a hearing shall be held in open court, and if the court finds that such petition should be granted it shall issue the order. [2011 c 336 § 699; 1955 c 272 § 8.]

Chapter 26.50 RCW DOMESTIC VIOLENCE PREVENTION

Sections

26.50.130 Order for protection—Modification or termination—Service—Transmittal.

26.50.130 Order for protection—Modification or termination—Service—Transmittal. (1) Upon a motion with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection or may terminate an existing order for protection.

(2) A respondent's motion to modify or terminate an order for protection that is permanent or issued for a fixed period exceeding two years must include a declaration setting forth facts supporting the requested order for termination or modification. The motion and declaration must be served according to subsection (7) of this section. The nonmoving parties to the proceeding may file opposing declarations. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the declarations. If the court finds that the respondent established adequate cause, the court shall set a date for hearing the respondent's motion.

(3)(a) The court may not terminate an order for protection that is permanent or issued for a fixed period exceeding two years upon a motion of the respondent unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of domestic violence against the petitioner or those persons protected by the protection order if the order is terminated. In a motion by the respondent for termination of an order for protection that is permanent or issued for a fixed period exceeding two years, the petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent.

(b) For the purposes of this subsection, a court shall determine whether there has been a "substantial change in circumstances" by considering only factors which address

whether the respondent is likely to commit future acts of domestic violence against the petitioner or those persons protected by the protection order.

(c) In determining whether there has been a substantial change in circumstances the court may consider the following unweighted factors, and no inference is to be drawn from the order in which the factors are listed:

(i) Whether the respondent has committed or threatened domestic violence, sexual assault, stalking, or other violent acts since the protection order was entered;

(ii) Whether the respondent has violated the terms of the protection order, and the time that has passed since the entry of the order;

(iii) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;

(iv) Whether the respondent has been convicted of criminal activity since the protection order was entered;

(v) Whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling since the protection order was entered;

(vi) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;

(vii) Whether the petitioner consents to terminating the protection order, provided that consent is given voluntarily and knowingly;

(viii) Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of domestic violence may be committed from any distance;

(ix) Other factors relating to a substantial change in circumstances.

(d) In determining whether there has been a substantial change in circumstances, the court may not base its determination solely on: (i) The fact that time has passed without a violation of the order; or (ii) the fact that the respondent or petitioner has relocated to an area more distant from the other party.

(e) Regardless of whether there is a substantial change in circumstances, the court may decline to terminate a protection order if it finds that the acts of domestic violence that resulted in the issuance of the protection order were of such severity that the order should not be terminated.

(4) The court may not modify an order for protection that is permanent or issued for a fixed period exceeding two years upon a motion of the respondent unless the respondent proves by a preponderance of the evidence that the requested modification is warranted. If the requested modification would reduce the duration of the protection order or would eliminate provisions in the protection order restraining the respondent from harassing, stalking, threatening, or committing other acts of domestic violence against the petitioner or the petitioner's children or family or household members or other persons protected by the order, the court shall consider the factors in subsection (3)(c) of this section in determining whether the protection order should be modified. Upon a motion by the respondent for modification of an order for protection that is permanent or issued for a fixed period exceeding two years, the petitioner bears no burden of prov-

ing that he or she has a current reasonable fear of imminent harm by the respondent.

(5) Upon a motion by a petitioner, the court may modify or terminate an existing order for protection. The court shall hear the motion without an adequate cause hearing.

(6) A court may require the respondent to pay court costs and service fees, as established by the county or municipality incurring the expense and to pay the petitioner for costs incurred in responding to a motion to terminate or modify a protection order, including reasonable attorneys' fees.

(7) Except as provided in RCW 26.50.085 and 26.50.123, a motion to modify or terminate an order for protection must be personally served on the nonmoving party not less than five court days prior to the hearing.

(a) If a moving party seeks to modify or terminate an order for protection that is permanent or issued for a fixed period exceeding two years, the sheriff of the county or the peace officers of the municipality in which the nonmoving party resides or a licensed process server shall serve the nonmoving party personally except when a petitioner is the moving party and elects to have the nonmoving party served by a private party.

(b) If the sheriff, municipal peace officer, or licensed process server cannot complete service upon the nonmoving party within ten days, the sheriff, municipal peace officer, or licensed process server shall notify the moving party. The moving party shall provide information sufficient to permit notification by the sheriff, municipal peace officer, or licensed process server.

(c) If timely personal service cannot be made, the court shall set a new hearing date and shall either require an additional attempt at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or service by mail as provided in RCW 26.50.123.

(d) The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or by mail unless the moving party requests additional time to attempt personal service.

(e) If the court permits service by publication or by mail, the court shall set the hearing date not later than twenty-four days from the date of the order permitting service by publication or by mail.

(8) Municipal police departments serving documents as required under this chapter may recover from a respondent ordered to pay fees under subsection (6) of this section the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(10) [(9)] In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system. [2011 c 137 § 2; 2008 c 287 § 3; 1984 c 263 § 14.]

Findings—2011 c 137: "The legislature finds that civil domestic violence protection orders are an essential tool for interrupting an abuser's ability to perpetrate domestic violence. The legislature has authorized courts to enter permanent or fixed term domestic violence protection orders if the court finds that the respondent is likely to resume acts of domestic violence when the order expires. However, the legislature has not established procedures or guidelines for terminating or modifying a protection order after it is

entered.

The legislature finds that some of the factors articulated in the Washington supreme court's decision in *In re Marriage of Freeman*, 169 Wn.2d 664, 239 P.3d 557 (2010), for terminating or modifying domestic violence protection orders do not demonstrate that a restrained person is unlikely to resume acts of domestic violence when the order expires, and place an improper burden on the person protected by the order. By this act, the legislature establishes procedures and guidelines for determining whether a domestic violence protection order should be terminated or modified." [2011 c 137 § 1.]

Short title—2008 c 287: See note following RCW 26.50.050.

Chapter 26.60 RCW

STATE REGISTERED DOMESTIC PARTNERSHIPS

Sections

26.60.090 Reciprocity.

26.60.090 Reciprocity. A legal union of two persons of the same sex that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under this chapter, shall be recognized as a valid domestic partnership in this state and shall be treated the same as a domestic partnership registered in this state regardless of whether it bears the name domestic partnership. [2011 c 9 § 1; 2009 c 521 § 72; 2008 c 6 § 1101.]

Title 27

LIBRARIES, MUSEUMS, AND HISTORICAL ACTIVITIES

Chapters

- 27.12 Public libraries.
- 27.18 Interstate library compact.
- 27.24 County law libraries.
- 27.40 Thomas Burke Memorial Washington State Museum of University of Washington.
- 27.53 Archaeological sites and resources.

Chapter 27.12 RCW

PUBLIC LIBRARIES

Sections

- 27.12.080 Regional libraries.
- 27.12.160 Intercounty rural library districts—District treasurer.
- 27.12.180 Contracts for library service.
- 27.12.210 Library trustees—Organization—Bylaws—Powers and duties.
- 27.12.240 Annual appropriations—Control of expenditures.
- 27.12.370 Annexation of city or town into library district—Special election procedure.

27.12.080 Regional libraries. Two or more counties, or other governmental units, by action of their legislative bodies, may join in establishing and maintaining a regional library under the terms of a contract to which all will agree. The expenses of the regional library shall be apportioned between or among the contracting parties concerned on such basis as shall be agreed upon in the contract. The treasurer of one of the governmental units, as shall be provided in the contract, shall have the custody of the funds of the regional library; and the treasurers of the other governmental units concerned shall transfer quarterly to him or her all moneys

collected for free public library purposes in their respective governmental units. If the legislative body of any governmental unit decides to withdraw from a regional library contract, the governmental unit withdrawing shall be entitled to a division of the property on the basis of its contributions. [2011 c 336 § 700; 1941 c 65 § 5; 1935 c 119 § 5; Rem. Supp. 1941 § 8226-5.]

27.12.160 Intercounty rural library districts—District treasurer. The board of trustees of an intercounty rural library district shall designate the county treasurer of one of the counties included in the district to act as treasurer for the district. All moneys raised for the district by taxation within the participating counties or received by the district from any other sources shall be paid over to him or her, and he or she shall disburse the funds of the district upon warrants drawn thereon by the auditor of the county to which he or she belongs pursuant to vouchers approved by the trustees of the district. [2011 c 336 § 701; 1947 c 75 § 8; Rem. Supp. 1947 § 8246-8.]

Annual expenditures—Control of appropriations: RCW 27.12.240.

27.12.180 Contracts for library service. Instead of establishing or maintaining an independent library, the legislative body of any governmental unit authorized to maintain a library shall have power to contract to receive library service from an existing library, the board of trustees of which shall have reciprocal power to contract to render the service with the consent of the legislative body of its governmental unit. Such a contract shall require that the existing library perform all the functions of a library within the governmental unit wanting service. In like manner a legislative body may contract for library service from a library not owned by a public corporation but maintained for free public use: PROVIDED, That such a library be subject to inspection by the state librarian and be certified by him or her as maintaining a proper standard. Any school district may contract for school library service from any existing library, such service to be paid for from funds available to the school district for library purposes. [2011 c 336 § 702; 1941 c 65 § 6; 1935 c 119 § 7; Rem. Supp. 1941 § 8226-7.]

27.12.210 Library trustees—Organization—Bylaws—Powers and duties. The trustees, immediately after their appointment or election, shall meet and organize by the election of such officers as they deem necessary. They shall:

- (1) Adopt such bylaws, rules, and regulations for their own guidance and for the government of the library as they deem expedient;
- (2) Have the supervision, care, and custody of all property of the library, including the rooms or buildings constructed, leased, or set apart therefor;
- (3) Employ a librarian, and upon his or her recommendation employ such other assistants as may be necessary, all in accordance with the provisions of *RCW 27.08.010, prescribe their duties, fix their compensation, and remove them for cause;
- (4) Submit annually to the legislative body a budget containing estimates in detail of the amount of money necessary

for the library for the ensuing year; except that in a library district the board of library trustees shall prepare its budget, certify the same and deliver it to the board of county commissioners in ample time for it to make the tax levies for the purpose of the district;

- (5) Have exclusive control of the finances of the library;
- (6) Accept such gifts of money or property for library purposes as they deem expedient;
- (7) Lease or purchase land for library buildings;
- (8) Lease, purchase, or erect an appropriate building or buildings for library purposes, and acquire such other property as may be needed therefor;
- (9) Purchase books, periodicals, maps, and supplies for the library; and
- (10) Do all other acts necessary for the orderly and efficient management and control of the library. [2011 c 336 § 703; 1982 c 123 § 9; 1941 c 65 § 8; 1935 c 119 § 9; Rem. Supp. 1941 § 8226-9. Prior: 1909 c 116 § 5; 1901 c 166 § 5.]

*Reviser's note: RCW 27.08.010 was repealed by 1987 c 330 § 402. See RCW 27.04.055 for qualifications of librarians.

27.12.240 Annual appropriations—Control of expenditures. After a library shall have been established or library service contracted for, the legislative body of the governmental unit for which the library was established or the service engaged, shall appropriate money annually for the support of the library. All funds for the library, whether derived from taxation or otherwise, shall be in the custody of the treasurer of the governmental unit, and shall be designated by him or her in some manner for identification, and shall not be used for any but library purposes. The board of trustees shall have the exclusive control of expenditures for library purposes subject to any examination of accounts required by the state and money shall be paid for library purposes only upon vouchers of the board of trustees, without further audit. The board shall not make expenditures or incur indebtedness in any year in excess of the amount of money appropriated and/or available for library purposes. [2011 c 336 § 704; 1965 c 122 § 4; 1941 c 65 § 9; 1939 c 108 § 3; 1935 c 119 § 10; Rem. Supp. 1941 § 8226-10. Prior: 1909 c 116 § 3; 1901 c 166 § 3. Formerly RCW 27.12.240 and 27.12.250.]

27.12.370 Annexation of city or town into library district—Special election procedure. The county legislative authority or authorities shall by resolution call a special election to be held in such city or town at the next special election date according to RCW 29A.04.321, and shall cause notice of such election to be given as provided for in RCW 29A.52.355.

The election on the annexation of the city or town into the library district shall be conducted by the auditor of the county or counties in which the city or town is located in accordance with the general election laws of the state and the results thereof shall be canvassed by the canvassing board of the county or counties. No person shall be entitled to vote at such election unless he or she is registered to vote in said city or town for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"Shall the city or town of be annexed to and be a part of library district?"

YES
NO

If a majority of the persons voting on the proposition shall vote in favor thereof, the city or town shall thereupon be annexed and shall be a part of such library district. [2011 c 10 § 78; 2006 c 344 § 19; 1982 c 123 § 14; 1977 ex.s. c 353 § 2.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Chapter 27.18 RCW INTERSTATE LIBRARY COMPACT

Sections

27.18.030 Compact administrator—Deputies—Library agreements, submittal.

27.18.030 Compact administrator—Deputies—Library agreements, submittal. The state librarian shall be the compact administrator pursuant to Article X of the compact. The state librarian shall appoint one or more deputy compact administrators. Every library agreement made pursuant to Article VI of the compact shall, as a condition precedent to its entry into force, be submitted to the state librarian for his or her recommendations. [2011 c 336 § 705; 1965 ex.s. c 93 § 3.]

Chapter 27.24 RCW COUNTY LAW LIBRARIES

Sections

27.24.020 Board of trustees—Composition—Terms.

27.24.020 Board of trustees—Composition—Terms. (1) Unless a regional law library is created pursuant to RCW 27.24.062, every county with a population of three hundred thousand or more must have a board of law library trustees consisting of five members to be constituted as follows: The chair of the county legislative authority is an ex officio trustee, the judges of the superior court of the county shall choose two of their number to be trustees, and the members of the county bar association shall choose two members of the bar of the county to be trustees.

(2) Unless a regional law library is created pursuant to RCW 27.24.062, every county with a population of eight thousand or more but less than three hundred thousand must have a board of law library trustees consisting of five members to be constituted as follows: The chair of the county legislative authority is an ex officio trustee, the judges of the superior court of the county shall choose one of their number to be a trustee, and the members of the county bar association shall choose three members of the county to be trustees. If there is no county bar association, then the lawyers of the county shall choose three of their number to be trustees.

(3) If a county has a population of less than eight thousand, then the provisions contained in RCW 27.24.068 shall

apply to the establishment and operation of the county law library.

(4) If a regional law library is created pursuant to RCW 27.24.062, then it shall be governed by one board of trustees. The board shall consist of the following representatives from each county: The judges of the superior court of the county shall choose one of their number to be a trustee, the county legislative authority shall choose one of their number to be a trustee, and the members of the county bar association shall choose one member of the bar of the county to be a trustee. If there is no county bar association, then the lawyers of the county shall choose one of their number to be a trustee.

(5) The term of office of a member of the board who is a judge is for as long as he or she continues to be a judge, and the term of a member who is from the bar is four years. Vacancies shall be filled as they occur and in the manner directed in this section. The office of trustee shall be without salary or other compensation. The board shall elect one of their number president and the librarian shall act as secretary, except that in counties with a population of eight thousand or more but less than three hundred thousand, the board shall elect one of their number to act as secretary if no librarian is appointed. Meetings shall be held at least once per year, and if more often, then at such times as may be prescribed by rule. [2011 c 336 § 706; 2005 c 63 § 2; 1992 c 62 § 2; 1919 c 84 § 2; RRS § 8248.]

Chapter 27.40 RCW

THOMAS BURKE MEMORIAL WASHINGTON STATE MUSEUM OF UNIVERSITY OF WASHINGTON

Sections

27.40.034 Permanent acquisition of documents and materials on loan to museum, procedure—Return of stolen documents and materials to owner.

27.40.034 Permanent acquisition of documents and materials on loan to museum, procedure—Return of stolen documents and materials to owner. The board of regents may provide, by rule or regulation, for:

(1) The permanent acquisition of documents or materials on loan to the state museum at the University of Washington, if the documents or materials have not been claimed by the owner thereof within ninety days after notice is sent by certified mail, return receipt requested, to the owner at his or her last known address by the board of regents and if the certified letter be returned because it could not be delivered to the addressee, public notice shall be published by the University of Washington once each week during two successive weeks in a newspaper circulating in the city of Seattle and the county of King describing the unclaimed documents or materials, giving the name of the reputed owner thereof and requesting all persons who may have any knowledge of the whereabouts of the owner to contact the office of the museum of the University of Washington: PROVIDED HOWEVER, That more than one item may be described in each of the notices;

(2) The return to the rightful owner of documents or materials in the possession of the museum, which documents or materials are determined to have been stolen: PRO-

VIDED, That any person claiming to be the rightful legal owner of the documents or materials who wishes to challenge the determination by the board shall have the right to commence a declaratory judgment action pursuant to chapter 7.24 RCW in the superior court for King county to determine the validity of his or her claim of ownership to the documents or materials. [2011 c 336 § 707; 1985 c 469 § 13; 1975 1st ex.s. c 159 § 1.]

Chapter 27.53 RCW

ARCHAEOLOGICAL SITES AND RESOURCES

Sections

27.53.030 Definitions.
27.53.070 Field investigations—Communication of site or resource location to department.

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

(1) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological resources of the state, and which has been certified in writing by two professional archaeologists.

(2) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, and technological by-products.

(3) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(4) "Archaeology" means systematic, scientific study of man's past through material remains.

(5) "Department" means the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(6) "Director" means the director of the department of archaeology and historic preservation, created in chapter 43.334 RCW.

(7) "Field investigation" means an on-site inspection by a professional archaeologist or by an individual under the direct supervision of a professional archaeologist employing archaeological inspection techniques for both the surface and subsurface identification of archaeological resources and artifacts resulting in a professional archaeological report detailing the results of such inspection.

(8) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term historic shall include only those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(9) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW

27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(10) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(11) "Professional archaeologist" means a person with qualifications meeting the federal secretary of the interior's standards for a professional archaeologist. Archaeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archaeologist for a period of four years provided the employee is pursuing qualifications necessary to meet the federal secretary of the interior's standards for a professional archaeologist. During this four-year period, the professional archaeologist is responsible for all findings. The four-year period is not subject to renewal. [2011 c 219 § 1; 2008 c 275 § 5; 2005 c 333 § 20; 1995 c 399 § 16; 1989 c 44 § 6; 1988 c 124 § 2; 1986 c 266 § 17; 1983 c 91 § 20; 1977 ex.s. c 195 § 13; 1975 1st ex.s. c 134 § 3.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Reporting requirements—2008 c 275: See note following RCW 68.50.645.

Intent—1989 c 44: See RCW 27.44.030.

Intent—1988 c 124: "It is the intent of the legislature that those historic archaeological resources located on state-owned aquatic lands that are of importance to the history of our state, or its communities, be protected for the people of the state. At the same time, the legislature also recognizes that divers have long enjoyed the recreation of diving near shipwrecks and picking up artifacts from the state-owned aquatic lands, and it is not the intent of the legislature to regulate these occasional, recreational activities except in areas where necessary to protect underwater historic archaeological sites. The legislature also recognizes that salvors who invest in a project to salvage underwater archaeological resources on state-owned aquatic lands should be required to obtain a state permit for their operation in order to protect the interest of the people of the state, as well as to protect the interest of the salvors who have invested considerable time and money in the salvage expedition." [1988 c 124 § 1.]

Additional notes found at www.leg.wa.gov

27.53.070 Field investigations—Communication of site or resource location to department. (1) It is the declared intention of the legislature that field investigations on privately owned lands should be conducted by professional archaeologists in accordance with both the provisions and spirit of this chapter. Persons having knowledge of the location of archaeological sites or resources are encouraged to communicate such information to the department. Such information shall not constitute a public record which requires disclosure pursuant to the exception authorized in chapter 42.56 RCW to avoid site depredation.

(2) Nothing in this chapter shall be interpreted to allow trespassing on private property. [2011 c 219 § 2. Prior: 2005 c 333 § 21; 2005 c 274 § 243; 1975-'76 2nd ex.s. c 82 § 3; 1975 1st ex.s. c 134 § 7.]

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

[2011 RCW Supp—page 468]

Title 28A

COMMON SCHOOL PROVISIONS

Chapters

- 28A.150 General provisions.
- 28A.155 Special education.
- 28A.160 Student transportation.
- 28A.165 Learning assistance program.
- 28A.170 Substance abuse awareness program.
- 28A.175 Dropout prevention, intervention, and retrieval system.
- 28A.180 Transitional bilingual instruction program.
- 28A.185 Highly capable students.
- 28A.200 Home-based instruction.
- 28A.210 Health—Screening and requirements.
- 28A.215 Early childhood, preschools, and before-and-after school care.
- 28A.220 Traffic safety.
- 28A.225 Compulsory school attendance and admission.
- 28A.230 Compulsory course work and activities.
- 28A.235 Food services.
- 28A.250 Online learning.
- 28A.290 Quality education council.
- 28A.300 Superintendent of public instruction.
- 28A.305 State board of education.
- 28A.310 Educational service districts.
- 28A.315 Organization and reorganization of school districts.
- 28A.320 Provisions applicable to all districts.
- 28A.323 Joint school districts—School districts in two or more educational service districts.
- 28A.325 Associated student bodies.
- 28A.330 Provisions applicable to school districts.
- 28A.335 School districts' property.
- 28A.340 Small high school cooperative projects.
- 28A.343 School director districts.
- 28A.345 Washington state school directors' association.
- 28A.400 Employees.
- 28A.405 Certificated employees.
- 28A.410 Certification.
- 28A.415 Institutes, workshops, and training.
- 28A.500 Local effort assistance.
- 28A.505 School districts' budgets.
- 28A.510 Apportionment to district—District accounting.
- 28A.515 Common school construction fund.
- 28A.520 Forest reserve funds distribution.
- 28A.525 Bond issues.
- 28A.527 School facilities—2008 bond issue.
- 28A.530 District bonds for land, buildings, and equipment.
- 28A.535 Validating indebtedness.
- 28A.540 Capital fund aid by nonhigh school districts.
- 28A.545 Payment to high school districts.
- 28A.600 Students.
- 28A.620 Community education programs.
- 28A.623 Meal programs.
- 28A.625 Awards.
- 28A.630 Temporary provisions—Special projects.
- 28A.650 Education technology.
- 28A.655 Academic achievement and accountability.
- 28A.660 Alternative route teacher certification.

Chapter 28A.150 RCW
GENERAL PROVISIONS

Sections

28A.150.100	Basic education certificated instructional staff—Definition—Ratio to students.
28A.150.210	Basic education—Goals of school districts.
28A.150.220	Basic education—Minimum instructional requirements—Program accessibility—Rules.
28A.150.260	Allocation of state funding to support instructional program of basic education—Distribution formula—Prototypical schools—Enhancements and adjustments—Review and approval—Enrollment calculation. (<i>Effective until July 1, 2013.</i>)
28A.150.260	Allocation of state funding to support instructional program of basic education—Distribution formula—Prototypical schools—Enhancements and adjustments—Review and approval—Enrollment calculation. (<i>Effective July 1, 2013.</i>)
28A.150.262	Defining full-time equivalent student—Students receiving instruction through alternative learning experience online programs—Requirements.
28A.150.315	Voluntary all-day kindergarten programs—Funding—Identification of skills, knowledge, and characteristics—Washington kindergarten inventory of developing skills—Waivers—Alternative assessments.
28A.150.325	Alternative learning experience programs—Generally—Rules.
28A.150.540	Condensed compliance reports—Second-class districts.

28A.150.100 Basic education certificated instructional staff—Definition—Ratio to students. (1) For the purposes of this section and RCW 28A.150.410 and 28A.400.200, "basic education certificated instructional staff" means all full-time equivalent classroom teachers, teacher librarians, guidance counselors, certificated student health services staff, and other certificated instructional staff in the following programs as defined for statewide school district accounting purposes: Basic education, secondary vocational education, general instructional support, and general supportive services.

(2) Each school district shall maintain a ratio of at least forty-six basic education certificated instructional staff to one thousand annual average full-time equivalent students. This requirement does not apply to that portion of a district's annual average full-time equivalent enrollment that is enrolled in alternative learning experience programs as defined in RCW 28A.150.325. [2011 1st sp.s. c 34 § 10; 2010 c 236 § 13; 1990 c 33 § 103; 1987 1st ex.s. c 2 § 203. Formerly RCW 28A.41.110.]

Effective date—2011 1st sp.s. c 34 §§ 9 and 10: See note following RCW 28A.150.260.

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

Effective date—2010 c 236 §§ 2, 3, 4, 8, 10, 13, and 14: See note following RCW 28A.150.260.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

28A.150.210 Basic education—Goals of school districts. A basic education is an evolving program of instruction that is intended to provide students with the opportunity to become responsible and respectful global citizens, to contribute to their economic well-being and that of their families and communities, to explore and understand different perspectives, and to enjoy productive and satisfying lives. Additionally, the state of Washington intends to provide for a public school system that is able to evolve and adapt in order to

better focus on strengthening the educational achievement of all students, which includes high expectations for all students and gives all students the opportunity to achieve personal and academic success. To these ends, the goals of each school district, with the involvement of parents and community members, shall be to provide opportunities for every student to develop the knowledge and skills essential to:

(1) Read with comprehension, write effectively, and communicate successfully in a variety of ways and settings and with a variety of audiences;

(2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history, including different cultures and participation in representative government; geography; arts; and health and fitness;

(3) Think analytically, logically, and creatively, and to integrate technology literacy and fluency as well as different experiences and knowledge to form reasoned judgments and solve problems; and

(4) Understand the importance of work and finance and how performance, effort, and decisions directly affect future career and educational opportunities. [2011 c 280 § 2; 2009 c 548 § 103; 2007 c 400 § 1; 1993 c 336 § 101; (1992 c 141 § 501 repealed by 1993 c 336 § 1203); 1977 ex.s. c 359 § 2. Formerly RCW 28A.58.752.]

Finding—2011 c 280: "The legislature finds that technology can be effectively integrated into other K-12 core subjects that students are expected to know and be able to do. Integration of knowledge and skills in technology literacy and fluency into other subjects will engage and motivate students to explore high-demand careers, such as engineering, mathematics, computer science, communication, art, entrepreneurship, and others; fields in which skilled individuals will create the new ideas, new products, and new industries of the future; and fields that demand the collaborative information skills and technological fluency of digital citizenship." [2011 c 280 § 1.]

Effective date—2011 c 280: "This act takes effect September 1, 2011." [2011 c 280 § 3.]

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See note following RCW 28A.150.198.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Captions not law—2007 c 400: "Captions used in this act are not any part of the law." [2007 c 400 § 9.]

Findings—Intent—1993 c 336: "The legislature finds that student achievement in Washington must be improved to keep pace with societal changes, changes in the workplace, and an increasingly competitive international economy.

To increase student achievement, the legislature finds that the state of Washington needs to develop a public school system that focuses more on the educational performance of students, that includes high expectations for all students, and that provides more flexibility for school boards and educators in how instruction is provided.

The legislature further finds that improving student achievement will require:

(1) Establishing what is expected of students, with standards set at internationally competitive levels;

(2) Parents to be primary partners in the education of their children, and to play a significantly greater role in local school decision making;

(3) Students taking more responsibility for their education;

(4) Time and resources for educators to collaboratively develop and implement strategies for improved student learning;

(5) Making instructional programs more relevant to students' future plans;

(6) All parties responsible for education to focus more on what is best for students; and

(7) An educational environment that fosters mutually respectful interactions in an atmosphere of collaboration and cooperation.

It is the intent of the legislature to provide students the opportunity to achieve at significantly higher levels, and to provide alternative or additional instructional opportunities to help students who are having difficulty meeting the essential academic learning requirements in RCW 28A.630.885.

It is also the intent of the legislature that students who have met or exceeded the essential academic learning requirements be provided with alternative or additional instructional opportunities to help advance their educational experience.

The provisions of chapter 336, Laws of 1993 shall not be construed to change current state requirements for students who receive home-based instruction under chapter 28A.200 RCW, or for students who attend state-approved private schools under chapter 28A.195 RCW." [1993 c 336 § 1.]

Findings—1993 c 336: "(1) The legislature finds that preparing students to make successful transitions from school to work helps promote educational, career, and personal success for all students.

(2) A successful school experience should prepare students to make informed career direction decisions at critical points in their educational progress. Schools that demonstrate the relevancy and practical application of course work will expose students to a broad range of interrelated career and educational opportunities and will expand students' posthigh school options.

(3) The school-to-work transitions program, under chapter 335, Laws of 1993, is intended to help secondary schools develop model programs for school-to-work transitions. The purposes of the model programs are to provide incentives for selected schools to:

(a) Integrate vocational and academic instruction into a single curriculum;

(b) Provide each student with a choice of multiple, flexible educational pathways based on the student's career interest areas;

(c) Emphasize increased vocational and academic guidance and counseling for students;

(d) Foster partnerships with local employers and employees to incorporate work sites as part of work-based learning experiences;

(e) Encourage collaboration among middle or junior high schools and secondary schools in developing successful transition programs and to encourage articulation agreements between secondary schools and community and technical colleges.

(4) The legislature further finds that successful implementation of the school-to-work transitions program is an important part of achieving the purposes of chapter 336, Laws of 1993." [1993 c 336 § 601.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Additional notes found at www.leg.wa.gov

28A.150.220 Basic education—Minimum instructional requirements—Program accessibility—Rules. (1) In order for students to have the opportunity to develop the basic education knowledge and skills under RCW 28A.150.210, school districts must provide instruction of sufficient quantity and quality and give students the opportunity to complete graduation requirements that are intended to prepare them for postsecondary education, gainful employment, and citizenship. The program established under this section shall be the minimum instructional program of basic education offered by school districts.

(2) Each school district shall make available to students the following minimum instructional offering each school year:

(a) For students enrolled in grades one through twelve, at least a district-wide annual average of one thousand hours, which shall be increased to at least one thousand eighty instructional hours for students enrolled in each of grades seven through twelve and at least one thousand instructional hours for students in each of grades one through six according to an implementation schedule adopted by the legislature, but not before the 2014-15 school year; and

(b) For students enrolled in kindergarten, at least four hundred fifty instructional hours, which shall be increased to at least one thousand instructional hours according to the implementation schedule under RCW 28A.150.315.

(3) The instructional program of basic education provided by each school district shall include:

(a) Instruction in the essential academic learning requirements under RCW 28A.655.070;

(b) Instruction that provides students the opportunity to complete twenty-four credits for high school graduation, subject to a phased-in implementation of the twenty-four credits as established by the legislature. Course distribution requirements may be established by the state board of education under RCW 28A.230.090;

(c) If the essential academic learning requirements include a requirement of languages other than English, the requirement may be met by students receiving instruction in one or more American Indian languages;

(d) Supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through 28A.165.065;

(e) Supplemental instruction and services for eligible and enrolled students whose primary language is other than English through the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080;

(f) The opportunity for an appropriate education at public expense as defined by RCW 28A.155.020 for all eligible students with disabilities as defined in RCW 28A.155.020; and

(g) Programs for highly capable students under RCW 28A.185.010 through 28A.185.030.

(4) Nothing contained in this section shall be construed to require individual students to attend school for any particular number of hours per day or to take any particular courses.

(5) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW 28A.225.160, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school district, and one hundred eighty half-days of instruction, or equivalent, in kindergarten, to be increased to a minimum of one hundred eighty school days per school year according to the implementation schedule under RCW 28A.150.315. However, effective May 1, 1979, a school district may schedule the last five school days of the one hundred and eighty day school year for noninstructional purposes in the case of students who are graduating from high school, including, but not limited to, the observance of graduation and early release from school upon the request of a student, and all such students may be claimed as a full-time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260.

(6) Nothing in this section precludes a school district from enriching the instructional program of basic education, such as offering additional instruction or providing additional services, programs, or activities that the school district determines to be appropriate for the education of the school district's students.

(7) The state board of education shall adopt rules to implement and ensure compliance with the program requirements imposed by this section, RCW 28A.150.250 and 28A.150.260, and such related supplemental program approval requirements as the state board may establish. [2011 1st sp.s. c 27 § 1; 2009 c 548 § 104; 1993 c 371 § 2; (1995 c 77 § 1 and 1993 c 371 § 1 expired September 1, 2000); 1992 c 141 § 503; 1990 c 33 § 105; 1982 c 158 § 1; 1979 ex.s. c 250 § 1; 1977 ex.s. c 359 § 3. Formerly RCW 28A.58.754.]

Effective date—2011 1st sp.s. c 27 §§ 1-3: "Sections 1 through 3 of this act take effect September 1, 2011." [2011 1st sp.s. c 27 § 8.]

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See note following RCW 28A.150.198.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Additional notes found at www.leg.wa.gov

28A.150.260 Allocation of state funding to support instructional program of basic education—Distribution formula—Prototypical schools—Enhancements and adjustments—Review and approval—Enrollment calculation. (Effective until July 1, 2013.) The purpose of this section is to provide for the allocation of state funding that the legislature deems necessary to support school districts in offering the minimum instructional program of basic education under RCW 28A.150.220. The allocation shall be determined as follows:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula for the distribution of a basic education instructional allocation for each common school district.

(2) The distribution formula under this section shall be for allocation purposes only. Except as may be required under chapter 28A.155, 28A.165, 28A.180, or 28A.185 RCW, or federal laws and regulations, nothing in this section requires school districts to use basic education instructional funds to implement a particular instructional approach or service. Nothing in this section requires school districts to maintain a particular classroom teacher-to-student ratio or other staff-to-student ratio or to use allocated funds to pay for particular types or classifications of staff. Nothing in this section entitles an individual teacher to a particular teacher planning period.

(3)(a) To the extent the technical details of the formula have been adopted by the legislature and except when specifically provided as a school district allocation, the distribution formula for the basic education instructional allocation shall be based on minimum staffing and nonstaff costs the legislature deems necessary to support instruction and operations in prototypical schools serving high, middle, and elementary school students as provided in this section. The use of prototypical schools for the distribution formula does not constitute legislative intent that schools should be operated or structured in a similar fashion as the prototypes. Prototypical schools illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs,

such as class size, hours of instruction, and various categories of school staff. It is the intent that the funding allocations to school districts be adjusted from the school prototypes based on the actual number of annual average full-time equivalent students in each grade level at each school in the district and not based on the grade-level configuration of the school to the extent that data is available. The allocations shall be further adjusted from the school prototypes with minimum allocations for small schools and to reflect other factors identified in the omnibus appropriations act.

(b) The total aggregate statewide allocations calculated under subsections (4) through (12) of this section for full-time equivalent student enrollment in alternative learning experience programs as defined in RCW 28A.150.325 shall be reduced by fifteen percent for the 2011-12 and 2012-13 school years. The superintendent of public instruction shall determine how to implement this aggregate fifteen percent reduction among the different alternative learning experience programs. No program may receive less than a ten percent reduction and no program may receive greater than a twenty percent reduction. In determining how to implement the reductions among the alternative learning experience programs, the superintendent of public instruction must look to both how a program is currently operating as well as how it has operated in the past, to the extent that data is available, and must give consideration to the following criteria:

(i) The category of program;

(ii) The certificated instructional staffing ratio maintained by the program;

(iii) The amount and type of direct personal student-to-teacher contact used by the program on a weekly basis;

(iv) Whether the program uses any classroom-based instructional time to meet requirements in the written student learning plan for enrolled students; and

(v) For online programs, whether the program is approved by the superintendent of public instruction under RCW 28A.250.020.

(c) The superintendent of public instruction shall report to the legislature by December 31, 2011, regarding how the reductions in (b) of this subsection were implemented.

(d) For the purposes of this section, prototypical schools are defined as follows:

(i) A prototypical high school has six hundred average annual full-time equivalent students in grades nine through twelve;

(ii) A prototypical middle school has four hundred thirty-two average annual full-time equivalent students in grades seven and eight; and

(iii) A prototypical elementary school has four hundred average annual full-time equivalent students in grades kindergarten through six.

(4)(a) The minimum allocation for each level of prototypical school shall be based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours under RCW 28A.150.220 and provide at least one teacher planning period per school day, and based on the following general education average class size of full-time equivalent students per teacher:

	General education average class size
Grades K-3 . . . . .	.25.23
Grade 4 . . . . .	.27.00
Grades 5-6 . . . . .	.27.00
Grades 7-8 . . . . .	.28.53
Grades 9-12 . . . . .	.28.74

	Career and technical education average class size
Approved career and technical education offered at the middle school and high school level . . . . .	.26.57
Skill center programs meeting the standards established by the office of the superintendent of public instruction. . . . .	.22.76

(b) During the 2011-2013 biennium and beginning with schools with the highest percentage of students eligible for free and reduced-price meals in the prior school year, the general education average class size for grades K-3 shall be reduced until the average class size funded under this subsection (4) is no more than 17.0 full-time equivalent students per teacher beginning in the 2017-18 school year.

(c) The minimum allocation for each prototypical middle and high school shall also provide for full-time equivalent classroom teachers based on the following number of full-time equivalent students per teacher in career and technical education:

(d) In addition, the omnibus appropriations act shall at a minimum specify:

(i) A high-poverty average class size in schools where more than fifty percent of the students are eligible for free and reduced-price meals; and

(ii) A specialty average class size for laboratory science, advanced placement, and international baccalaureate courses.

(5) The minimum allocation for each level of prototypical school shall include allocations for the following types of staff in addition to classroom teachers:

	Elementary School	Middle School	High School
Principals, assistant principals, and other certificated building-level administrators	1.253	1.353	1.880
Teacher librarians, a function that includes information literacy, technology, and media to support school library media programs	0.663	0.519	0.523
Health and social services:			
School nurses	0.076	0.060	0.096
Social workers	0.042	0.006	0.015
Psychologists	0.017	0.002	0.007
Guidance counselors, a function that includes parent outreach and graduation advising	0.493	1.116	1.909
Teaching assistance, including any aspect of educational instructional services provided by classified employees	0.936	0.700	0.652
Office support and other noninstructional aides	2.012	2.325	3.269
Custodians	1.657	1.942	2.965
Classified staff providing student and staff safety	0.079	0.092	0.141
Parent involvement coordinators	0.00	0.00	0.00

(6)(a) The minimum staffing allocation for each school district to provide district-wide support services shall be allocated per one thousand annual average full-time equivalent students in grades K-12 as follows:

	Staff per 1,000 K-12 students
Technology . . . . .	.0.628
Facilities, maintenance, and grounds . . . . .	.1.813
Warehouse, laborers, and mechanics . . . . .	.0.332

(b) The minimum allocation of staff units for each school district to support certificated and classified staffing of central administration shall be 5.30 percent of the staff units generated under subsections (4)(a) and (b) and (5) of this section and (a) of this subsection.

(7) The distribution formula shall include staffing allocations to school districts for career and technical education and skill center administrative and other school-level certificated staff, as specified in the omnibus appropriations act.

(8)(a) Except as provided in (b) of this subsection, the minimum allocation for each school district shall include allocations per annual average full-time equivalent student for the following materials, supplies, and operating costs, to be adjusted for inflation from the 2008-09 school year:

	Per annual average full-time equivalent student in grades K-12
Technology	\$.54.43
Utilities and insurance	\$147.90
Curriculum and textbooks	\$.58.44
Other supplies and library materials	\$.124.07
Instructional professional development for certified and classified staff	\$.9.04
Facilities maintenance	\$.73.27
Security and central office	\$.50.76

(b) During the 2011-2013 biennium, the minimum allocation for maintenance, supplies, and operating costs shall be

increased as specified in the omnibus appropriations act. The following allocations, adjusted for inflation from the 2007-08 school year, are provided in the 2015-16 school year, after which the allocations shall be adjusted annually for inflation as specified in the omnibus appropriations act:

	Per annual average full-time equivalent student in grades K-12
Technology	\$113.80
Utilities and insurance	\$309.21
Curriculum and textbooks	\$122.17
Other supplies and library materials	\$259.39
Instructional professional development for certificated and classified staff	\$18.89
Facilities maintenance	\$153.18
Security and central office administration	\$106.12

(9) In addition to the amounts provided in subsection (8) of this section, the omnibus appropriations act shall provide an amount based on full-time equivalent student enrollment in each of the following:

- (a) Exploratory career and technical education courses for students in grades seven through twelve;
- (b) Laboratory science courses for students in grades nine through twelve;
- (c) Preparatory career and technical education courses for students in grades nine through twelve offered in a high school; and
- (d) Preparatory career and technical education courses for students in grades eleven and twelve offered through a skill center.

(10) In addition to the allocations otherwise provided under this section, amounts shall be provided to support the following programs and services:

- (a) To provide supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through 28A.165.065, allocations shall be based on the district percentage of students in grades K-12 who were eligible for free or reduced-price meals in the prior school year. The minimum allocation for the program shall provide for each level of prototypical school resources to provide, on a statewide average, 1.5156 hours per week in extra instruction with a class size of fifteen learning assistance program students per teacher.
- (b) To provide supplemental instruction and services for students whose primary language is other than English, allocations shall be based on the head count number of students in each school who are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080. The minimum allocation for each level of prototypical school shall provide resources to provide, on a statewide average, 4.7780 hours per week in extra instruction with fifteen transitional bilingual instruction program students per teacher. Notwithstanding other provisions of this subsection (10), the actual per-student allocation may be scaled to provide a larger allocation for students needing more intensive intervention and a commensurate reduced allocation for students needing less intensive intervention, as detailed in the omnibus appropriations act.

(c) To provide additional allocations to support programs for highly capable students under RCW 28A.185.010 through 28A.185.030, allocations shall be based on two and three hundred fourteen one-thousandths percent of each school district's full-time equivalent basic education enrollment. The minimum allocation for the programs shall provide resources to provide, on a statewide average, 2.1590 hours per week in extra instruction with fifteen highly capable program students per teacher.

(11) The allocations under subsections (4)(a) and (b), (5), (6), and (8) of this section shall be enhanced as provided under RCW 28A.150.390 on an excess cost basis to provide supplemental instructional resources for students with disabilities.

(12)(a) For the purposes of allocations for prototypical high schools and middle schools under subsections (4) and (10) of this section that are based on the percent of students in the school who are eligible for free and reduced-price meals, the actual percent of such students in a school shall be adjusted by a factor identified in the omnibus appropriations act to reflect underreporting of free and reduced-price meal eligibility among middle and high school students.

(b) Allocations or enhancements provided under subsections (4), (7), and (9) of this section for exploratory and preparatory career and technical education courses shall be provided only for courses approved by the office of the superintendent of public instruction under chapter 28A.700 RCW.

(13)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature.

(b) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect.

(c) The enrollment of any district shall be the annual average number of full-time equivalent students and part-time students as provided in RCW 28A.150.350, enrolled on the first school day of each month, including students who are in attendance pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district. The definition of full-time equivalent student shall be determined by rules of the superintendent of public instruction and shall be included as part of the superintendent's biennial budget request. The definition shall be based on the minimum instructional hour offerings required under RCW 28A.150.220. Any revision of the present definition shall not take effect until approved by the house ways and means committee and the senate ways and means committee.

(d) The office of financial management shall make a monthly review of the superintendent's reported full-time equivalent students in the common schools in conjunction with RCW 43.62.050. [2011 1st sp.s. c 34 § 9; 2011 1st sp.s. c 27 § 2; 2010 c 236 § 2; 2009 c 548 § 106; 2006 c 263 § 322; 1997 c 13 § 2; (1997 c 13 § 1 and 1995 c 77 § 2 expired September 1, 2000); 1995 c 77 § 3; 1992 c 141 § 507; 1992 c 141 § 303; 1991 c 116 § 10; 1990 c 33 § 108; 1987 1st ex.s. c 2 § 202; 1985 c 349 § 5; 1983 c 229 § 1; 1979 ex.s. c 250 § 3; 1979 c 151 § 12; 1977 ex.s. c 359 § 5; 1969 ex.s. c 244 § 14. Prior: 1969 ex.s. c 217 § 3; 1969 c 130 § 7; 1969 ex.s. c 223

§ 28A.41.140; prior: 1965 ex.s. c 154 § 3. Formerly RCW 28A.41.140, 28.41.140.]

Reviser's note: This section was amended by 2011 1st sp.s. c 27 § 2 and by 2011 1st sp.s. c 34 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 34 §§ 9 and 10: "Sections 9 and 10 of this act take effect September 1, 2011." [2011 1st sp.s. c 34 § 12.]

Expiration date—2011 1st sp.s. c 34 § 9: "Section 9 of this act expires July 1, 2013." [2011 1st sp.s. c 34 § 13.]

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

Effective date—2011 1st sp.s. c 27 §§ 1-3: See note following RCW 28A.150.220.

Effective date—2010 c 236 §§ 2, 3, 4, 8, 10, 13, and 14: "Sections 2, 3, 4, 8, 10, 13, and 14 of this act take effect September 1, 2011." [2010 c 236 § 19.]

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See note following RCW 28A.150.198.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Basic Education Act, RCW 28A.150.260 as part of: RCW 28A.150.200.

Distribution of forest reserve funds—As affects basic education allocation: RCW 28A.520.020.

Additional notes found at www.leg.wa.gov

28A.150.260 Allocation of state funding to support instructional program of basic education—Distribution formula—Prototypical schools—Enhancements and adjustments—Review and approval—Enrollment calculation. (Effective July 1, 2013.) The purpose of this section is to provide for the allocation of state funding that the legislature deems necessary to support school districts in offering the minimum instructional program of basic education under RCW 28A.150.220. The allocation shall be determined as follows:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula for the distribution of a basic education instructional allocation for each common school district.

(2) The distribution formula under this section shall be for allocation purposes only. Except as may be required under chapter 28A.155, 28A.165, 28A.180, or 28A.185 RCW, or federal laws and regulations, nothing in this section requires school districts to use basic education instructional funds to implement a particular instructional approach or service. Nothing in this section requires school districts to maintain a particular classroom teacher-to-student ratio or other staff-to-student ratio or to use allocated funds to pay for particular types or classifications of staff. Nothing in this section entitles an individual teacher to a particular teacher planning period.

(3)(a) To the extent the technical details of the formula have been adopted by the legislature and except when specifically provided as a school district allocation, the distribution

formula for the basic education instructional allocation shall be based on minimum staffing and nonstaff costs the legislature deems necessary to support instruction and operations in prototypical schools serving high, middle, and elementary school students as provided in this section. The use of prototypical schools for the distribution formula does not constitute legislative intent that schools should be operated or structured in a similar fashion as the prototypes. Prototypical schools illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs, such as class size, hours of instruction, and various categories of school staff. It is the intent that the funding allocations to school districts be adjusted from the school prototypes based on the actual number of annual average full-time equivalent students in each grade level at each school in the district and not based on the grade-level configuration of the school to the extent that data is available. The allocations shall be further adjusted from the school prototypes with minimum allocations for small schools and to reflect other factors identified in the omnibus appropriations act.

(b) For the purposes of this section, prototypical schools are defined as follows:

(i) A prototypical high school has six hundred average annual full-time equivalent students in grades nine through twelve;

(ii) A prototypical middle school has four hundred thirty-two average annual full-time equivalent students in grades seven and eight; and

(iii) A prototypical elementary school has four hundred average annual full-time equivalent students in grades kindergarten through six.

(4)(a) The minimum allocation for each level of prototypical school shall be based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours under RCW 28A.150.220 and provide at least one teacher planning period per school day, and based on the following general education average class size of full-time equivalent students per teacher:

	General education average class size
Grades K-3	25.23
Grade 4	27.00
Grades 5-6	27.00
Grades 7-8	28.53
Grades 9-12	28.74

(b) During the 2011-2013 biennium and beginning with schools with the highest percentage of students eligible for free and reduced-price meals in the prior school year, the general education average class size for grades K-3 shall be reduced until the average class size funded under this subsection (4) is no more than 17.0 full-time equivalent students per teacher beginning in the 2017-18 school year.

(c) The minimum allocation for each prototypical middle and high school shall also provide for full-time equivalent classroom teachers based on the following number of full-time equivalent students per teacher in career and technical education:

	Career and technical education average class size
Approved career and technical education offered at the middle school and high school level . . . . .	.26.57
Skill center programs meeting the standards established by the office of the superintendent of public instruction. . . . .	.22.76

(d) In addition, the omnibus appropriations act shall at a minimum specify:

	Elementary School	Middle School	High School
Principals, assistant principals, and other certificated building-level administrators	1.253	1.353	1.880
Teacher librarians, a function that includes information literacy, technology, and media to support school library media programs	0.663	0.519	0.523
Health and social services:			
School nurses	0.076	0.060	0.096
Social workers	0.042	0.006	0.015
Psychologists	0.017	0.002	0.007
Guidance counselors, a function that includes parent outreach and graduation advising.	0.493	1.116	1.909
Teaching assistance, including any aspect of educational instructional services provided by classified employees	0.936	0.700	0.652
Office support and other noninstructional aides	2.012	2.325	3.269
Custodians	1.657	1.942	2.965
Classified staff providing student and staff safety	0.079	0.092	0.141
Parent involvement coordinators	0.00	0.00	0.00

(6)(a) The minimum staffing allocation for each school district to provide district-wide support services shall be allocated per one thousand annual average full-time equivalent students in grades K-12 as follows:

	Staff per 1,000 K-12 students
Technology . . . . .	.0.628
Facilities, maintenance, and grounds . . . . .	.1.813
Warehouse, laborers, and mechanics . . . . .	.0.332

(b) The minimum allocation of staff units for each school district to support certificated and classified staffing of central administration shall be 5.30 percent of the staff units generated under subsections (4)(a) and (b) and (5) of this section and (a) of this subsection.

(7) The distribution formula shall include staffing allocations to school districts for career and technical education and skill center administrative and other school-level certificated staff, as specified in the omnibus appropriations act.

(8)(a) Except as provided in (b) of this subsection, the minimum allocation for each school district shall include allocations per annual average full-time equivalent student for the following materials, supplies, and operating costs, to be adjusted for inflation from the 2008-09 school year:

	Per annual average full-time equivalent student in grades K-12
Technology	\$.54.43

(i) A high-poverty average class size in schools where more than fifty percent of the students are eligible for free and reduced-price meals; and

(ii) A specialty average class size for laboratory science, advanced placement, and international baccalaureate courses.

(5) The minimum allocation for each level of prototypical school shall include allocations for the following types of staff in addition to classroom teachers:

Utilities and insurance	\$147.90
Curriculum and textbooks	\$58.44
Other supplies and library materials	\$124.07
Instructional professional development for certified and classified staff	\$9.04
Facilities maintenance	\$73.27
Security and central office	\$50.76

(b) During the 2011-2013 biennium, the minimum allocation for maintenance, supplies, and operating costs shall be increased as specified in the omnibus appropriations act. The following allocations, adjusted for inflation from the 2007-08 school year, are provided in the 2015-16 school year, after which the allocations shall be adjusted annually for inflation as specified in the omnibus appropriations act:

	Per annual average full-time equivalent student in grades K-12
Technology	\$113.80
Utilities and insurance	\$309.21
Curriculum and textbooks	\$122.17
Other supplies and library materials	\$259.39
Instructional professional development for certificated and classified staff	\$18.89
Facilities maintenance	\$153.18
Security and central office administration	\$106.12

(9) In addition to the amounts provided in subsection (8) of this section, the omnibus appropriations act shall provide

an amount based on full-time equivalent student enrollment in each of the following:

(a) Exploratory career and technical education courses for students in grades seven through twelve;

(b) Laboratory science courses for students in grades nine through twelve;

(c) Preparatory career and technical education courses for students in grades nine through twelve offered in a high school; and

(d) Preparatory career and technical education courses for students in grades eleven and twelve offered through a skill center.

(10) In addition to the allocations otherwise provided under this section, amounts shall be provided to support the following programs and services:

(a) To provide supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through 28A.165.065, allocations shall be based on the district percentage of students in grades K-12 who were eligible for free or reduced-price meals in the prior school year. The minimum allocation for the program shall provide for each level of prototypical school resources to provide, on a statewide average, 1.5156 hours per week in extra instruction with a class size of fifteen learning assistance program students per teacher.

(b) To provide supplemental instruction and services for students whose primary language is other than English, allocations shall be based on the head count number of students in each school who are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080. The minimum allocation for each level of prototypical school shall provide resources to provide, on a statewide average, 4.7780 hours per week in extra instruction with fifteen transitional bilingual instruction program students per teacher. Notwithstanding other provisions of this subsection (10), the actual per-student allocation may be scaled to provide a larger allocation for students needing more intensive intervention and a commensurate reduced allocation for students needing less intensive intervention, as detailed in the omnibus appropriations act.

(c) To provide additional allocations to support programs for highly capable students under RCW 28A.185.010 through 28A.185.030, allocations shall be based on two and three hundred fourteen one-thousandths percent of each school district's full-time equivalent basic education enrollment. The minimum allocation for the programs shall provide resources to provide, on a statewide average, 2.1590 hours per week in extra instruction with fifteen highly capable program students per teacher.

(11) The allocations under subsections (4)(a) and (b), (5), (6), and (8) of this section shall be enhanced as provided under RCW 28A.150.390 on an excess cost basis to provide supplemental instructional resources for students with disabilities.

(12)(a) For the purposes of allocations for prototypical high schools and middle schools under subsections (4) and (10) of this section that are based on the percent of students in the school who are eligible for free and reduced-price meals, the actual percent of such students in a school shall be adjusted by a factor identified in the omnibus appropriations

act to reflect underreporting of free and reduced-price meal eligibility among middle and high school students.

(b) Allocations or enhancements provided under subsections (4), (7), and (9) of this section for exploratory and preparatory career and technical education courses shall be provided only for courses approved by the office of the superintendent of public instruction under chapter 28A.700 RCW.

(13)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature.

(b) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect.

(c) The enrollment of any district shall be the annual average number of full-time equivalent students and part-time students as provided in RCW 28A.150.350, enrolled on the first school day of each month, including students who are in attendance pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district. The definition of full-time equivalent student shall be determined by rules of the superintendent of public instruction and shall be included as part of the superintendent's biennial budget request. The definition shall be based on the minimum instructional hour offerings required under RCW 28A.150.220. Any revision of the present definition shall not take effect until approved by the house ways and means committee and the senate ways and means committee.

(d) The office of financial management shall make a monthly review of the superintendent's reported full-time equivalent students in the common schools in conjunction with RCW 43.62.050. [2011 1st sp.s. c 27 § 2; 2010 c 236 § 2; 2009 c 548 § 106; 2006 c 263 § 322; 1997 c 13 § 2; (1997 c 13 § 1 and 1995 c 77 § 2 expired September 1, 2000); 1995 c 77 § 3; 1992 c 141 § 507; 1992 c 141 § 303; 1991 c 116 § 10; 1990 c 33 § 108; 1987 1st ex.s. c 2 § 202; 1985 c 349 § 5; 1983 c 229 § 1; 1979 ex.s. c 250 § 3; 1979 c 151 § 12; 1977 ex.s. c 359 § 5; 1969 ex.s. c 244 § 14. Prior: 1969 ex.s. c 217 § 3; 1969 c 130 § 7; 1969 ex.s. c 223 § 28A.41.140; prior: 1965 ex.s. c 154 § 3. Formerly RCW 28A.41.140, 28.41.140.]

Effective date—2011 1st sp.s. c 27 §§ 1-3: See note following RCW 28A.150.220.

Effective date—2010 c 236 §§ 2, 3, 4, 8, 10, 13, and 14: "Sections 2, 3, 4, 8, 10, 13, and 14 of this act take effect September 1, 2011." [2010 c 236 § 19.]

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See note following RCW 28A.150.198.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Basic Education Act, RCW 28A.150.260 as part of: RCW 28A.150.200.

Distribution of forest reserve funds—As affects basic education allocation: RCW 28A.520.020.

Additional notes found at www.leg.wa.gov

28A.150.262 Defining full-time equivalent student—Students receiving instruction through alternative learning experience online programs—Requirements. Under RCW 28A.150.260, the superintendent of public instruction shall revise the definition of a full-time equivalent student to include students who receive instruction through alternative learning experience online programs. As used in this section and RCW 28A.150.325, an "alternative learning experience online program" is a set of online courses or an online school program as defined in RCW 28A.250.010 that is delivered to students in whole or in part independently from a regular classroom schedule. Beginning in the 2013-14 school year, alternative learning experience online programs must be offered by an online provider approved by the superintendent of public instruction under RCW 28A.250.020 to meet the definition in this section. The rules shall include but not be limited to the following:

(1) Defining a full-time equivalent student under RCW 28A.150.260 or part-time student under RCW 28A.150.350 based upon the district's estimated average weekly hours of learning activity as identified in the student's learning plan, as long as the student is found, through monthly evaluation, to be making satisfactory progress; the rules shall require districts providing programs under this section to nonresident students to establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate;

(2) Requiring the board of directors of a school district offering, or contracting under RCW 28A.150.305 to offer, an alternative learning experience online program to adopt and annually review written policies for each program and program provider and to receive an annual report on its digital alternative learning experience online programs from its staff;

(3) Requiring each school district offering or contracting to offer an alternative learning experience online program to report annually to the superintendent of public instruction on the types of programs and course offerings, and number of students participating;

(4) Requiring completion of a program self-evaluation;

(5) Requiring documentation of the district of the student's physical residence;

(6) Requiring that supervision, monitoring, assessment, and evaluation of the alternative learning experience online program be provided by a certificated teacher;

(7) Requiring each school district offering courses or programs to identify the ratio of certificated instructional staff to full-time equivalent students enrolled in such courses or programs, and to include a description of their ratio as part of the reports required under subsections (2) and (3) of this section;

(8) Requiring reliable methods to verify a student is doing his or her own work; the methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district;

(9) Requiring, for each student receiving instruction in an alternative learning experience online program, a learning

plan that includes a description of course objectives and information on the requirements a student must meet to successfully complete the program or courses. The rules shall allow course syllabi and other additional information to be used to meet the requirement for a learning plan;

(10) Requiring that the district assess the educational progress of enrolled students at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students shall also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW. The rules shall address how students who reside outside the geographic service area of the school district are to be assessed;

(11) Requiring that each student enrolled in the program have direct personal contact with a certificated teacher at least weekly until the student completes the course objectives or the requirements in the learning plan. Direct personal contact is for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities. Direct personal contact may include the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication;

(12) Requiring state-funded public schools or public school programs whose primary purpose is to provide alternative learning experience online learning programs to receive accreditation through the Northwest accreditation commission or another national, regional, or state accreditation program listed by the office of the superintendent of public instruction after consultation with the Washington coalition for online learning;

(13) Requiring state-funded public schools or public school programs whose primary purpose is to provide alternative learning experience online learning to provide information to students and parents on whether or not the courses or programs: Cover one or more of the school district's learning goals or of the state's essential academic learning requirements or whether they permit the student to meet one or more of the state's or district's graduation requirements; and

(14) Requiring that a school district that provides one or more alternative learning experience online courses to a student provide the parent or guardian of the student, prior to the student's enrollment, with a description of any difference between home-based education as described in chapter 28A.200 RCW and the enrollment option selected by the student. The parent or guardian shall sign documentation attesting to his or her understanding of the difference and the documentation shall be retained by the district and made available for audit. [2011 1st sp.s. c 34 § 3; 2009 c 542 § 9; 2005 c 356 § 2.]

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

Findings—Intent—2005 c 356: "The legislature finds that digital learning courses and programs can provide students with opportunities to study subjects that may not otherwise be available within the students' schools, school districts, or communities. These courses can also meet the instructional needs of students who have scheduling conflicts, students who

learn best from technology-based instructional methods, and students who have a need to enroll in schools on a part-time basis. Digital learning courses can also meet the needs of students and families seeking nontraditional learning environments. The legislature further finds that the state rules used by school districts to support some digital learning courses were adopted before these types of courses were created, so the rules are not well-suited to the funding and delivery of digital instruction. It is the intent of the legislature to clarify the funding and delivery requirements for digital learning courses." [2005 c 356 § 1.]

28A.150.315 Voluntary all-day kindergarten programs—Funding—Identification of skills, knowledge, and characteristics—Washington kindergarten inventory of developing skills—Waivers—Alternative assessments.

(1) Beginning with the 2007-08 school year, funding for voluntary all-day kindergarten programs shall be phased-in beginning with schools with the highest poverty levels, defined as those schools with the highest percentages of students qualifying for free and reduced-price lunch support in the prior school year. During the 2011-2013 biennium, funding shall continue to be phased-in each year until full state-wide implementation of all-day kindergarten is achieved in the 2017-18 school year. Once a school receives funding for the all-day kindergarten program, that school shall remain eligible for funding in subsequent school years regardless of changes in the school's percentage of students eligible for free and reduced-price lunches as long as other program requirements are fulfilled. Additionally, schools receiving all-day kindergarten program support shall agree to the following conditions:

- (a) Provide at least a one thousand-hour instructional program;
- (b) Provide a curriculum that offers a rich, varied set of experiences that assist students in:
 - (i) Developing initial skills in the academic areas of reading, mathematics, and writing;
 - (ii) Developing a variety of communication skills;
 - (iii) Providing experiences in science, social studies, arts, health and physical education, and a world language other than English;
 - (iv) Acquiring large and small motor skills;
 - (v) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and
 - (vi) Learning through hands-on experiences;
- (c) Establish learning environments that are developmentally appropriate and promote creativity;
- (d) Demonstrate strong connections and communication with early learning community providers; and
- (e) Participate in kindergarten program readiness activities with early learning providers and parents.

(2)(a) In addition to the requirements in subsection (1) of this section and to the extent funds are available, beginning with the 2011-12 school year on a voluntary basis, schools must identify the skills, knowledge, and characteristics of kindergarten students at the beginning of the school year in order to support social-emotional, physical, and cognitive growth and development of individual children; support early learning provider and parent involvement; and inform instruction. Kindergarten teachers shall administer the Washington kindergarten inventory of developing skills, as directed by the superintendent of public instruction in consul-

tation with the department of early learning, and report the results to the superintendent. The superintendent shall share the results with the director of the department of early learning.

(b) School districts shall provide an opportunity for parents and guardians to excuse their children from participation in the Washington kindergarten inventory of developing skills.

(c) To the extent funds are available, beginning in the 2012-13 school year, the Washington kindergarten inventory of developing skills shall be administered at the beginning of the school year to all students enrolled in state-funded full-day kindergarten programs with the exception of students who have been excused from participation by their parents or guardians.

(d) Until full implementation of state-funded all-day kindergarten, the superintendent of public instruction, in consultation with the director of the department of early learning, may grant annual, renewable waivers from the requirement of (c) of this subsection to administer the Washington kindergarten inventory of developing skills. A school district seeking a waiver for one or more of its schools must submit an application to the office of the superintendent of public instruction that includes:

- (i) A description of the kindergarten readiness assessment and transition processes that it proposes to administer instead of the Washington kindergarten inventory of developing skills;
- (ii) An explanation of why the administration of the Washington kindergarten inventory of developing skills would be unduly burdensome; and
- (iii) An explanation of how administration of the alternative kindergarten readiness assessment will support social-emotional, physical, and cognitive growth and development of individual children; support early learning provider and parent involvement; and inform instruction.

(3) Subject to funds appropriated for this purpose, the superintendent of public instruction shall designate one or more school districts to serve as resources and examples of best practices in designing and operating a high-quality all-day kindergarten program. Designated school districts shall serve as lighthouse programs and provide technical assistance to other school districts in the initial stages of implementing an all-day kindergarten program. Examples of topics addressed by the technical assistance include strategic planning, developing the instructional program and curriculum, working with early learning providers to identify students and communicate with parents, and developing kindergarten program readiness activities. [2011 c 340 § 1; 2010 c 236 § 4; 2009 c 548 § 107; 2007 c 400 § 2.]

Effective date—2011 c 340 § 1: "Section 1 of this act takes effect September 1, 2011." [2011 c 340 § 3.]

Effective date—2010 c 236 §§ 2, 3, 4, 8, 10, 13, and 14: See note following RCW 28A.150.260.

Effective date—2009 c 548 §§ 101-110 and 701-710: See note following RCW 28A.150.200.

Intent—2009 c 548: See note following RCW 28A.150.198.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Captions not law—2007 c 400: See note following RCW 28A.150.210.

28A.150.325 Alternative learning experience programs—Generally—Rules. (1) For purposes of this chapter, "alternative learning experience program" means a course or set of courses that is:

(a) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;

(b) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or under contract as permitted by applicable rules; and

(c) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's policy and rules adopted by the superintendent of public instruction for alternative learning experiences.

(2) The broad categories of alternative learning experience programs include, but are not limited to:

(a) Online programs as defined in RCW 28A.150.262;

(b) Parent partnership programs that include significant participation and partnership by parents and families in the design and implementation of a student's learning experience; and

(c) Contract-based learning programs.

(3) School districts that offer alternative learning experience programs may not provide any compensation, reimbursement, gift, reward, or gratuity to any parents, guardians, or students for participation. School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience program. This prohibition includes, but is not limited to, providing funds to parents, guardians, or students for the purchase of educational materials, supplies, experiences, services, or technological equipment. A district may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience programs if the purchase is consistent with the district's approved curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's regular instructional program. Items so purchased remain the property of the school district upon program completion. School districts may not purchase or contract for instructional or co-curricular experiences and services that are included in an alternative learning experience written student learning plan, including but not limited to lessons, trips, and other activities, unless substantially similar experiences and services are available to students enrolled in the district's regular instructional program. School districts that purchase or contract for such experiences and services for students enrolled in an alternative learning experience program must submit an annual report to the office of the superintendent of public instruction detailing the costs and purposes of the expenditures. These requirements extend to contracted providers of alternative learning experience programs, and each district shall be responsible for monitoring the compliance of its providers with these requirements. However, nothing in this section shall prohibit school districts from contracting with online providers approved by the office of the superintendent of public instruction pursuant to chapter 28A.250 RCW.

(4) Part-time enrollment in alternative learning experiences is subject to the provisions of RCW 28A.150.350.

(5) The superintendent of public instruction shall adopt rules defining minimum requirements and accountability for alternative learning experience programs. [2011 1st sp.s. c 34 § 2.]

Finding—Intent—2011 1st sp.s. c 34: "(1) Under Article IX of the Washington state Constitution, all children are entitled to an opportunity to receive a basic education. Although the state must assure that students in public schools have opportunities to participate in the instructional program of basic education, there is no obligation for either the state or school districts to provide that instruction using a particular delivery method or through a particular program.

(2) The legislature finds ample evidence of the need to examine and reconsider policies under which alternative learning that occurs outside the classroom using an individual student learning plan may be considered equivalent to full-time attendance in school, including for funding purposes. Previous legislative studies have raised questions about financial practices and accountability in alternative learning experience programs. Since 2005, there has been significant enrollment growth in alternative learning experience online programs, with evidence of unexpected financial impact when large numbers of nonresident students enroll in programs. Based on this evidence, there is a rational basis on which to conclude that there are different costs associated with providing a program not primarily based on full-time, daily contact between teachers and students and not primarily occurring on-site in a classroom.

(3) For these reasons, the legislature intends to allow for continuing review and revision of the way in which state funding allocations are used to support alternative learning experience programs." [2011 1st sp.s. c 34 § 1.]

28A.150.540 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 3.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.155 RCW SPECIAL EDUCATION

Sections

28A.155.200 Condensed compliance reports—Second-class districts.

28A.155.200 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 4.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.160 RCW STUDENT TRANSPORTATION

Sections

28A.160.192 Student transportation allocation—Distribution formula.

28A.160.225 Condensed compliance reports—Second-class districts.

28A.160.192 Student transportation allocation—Distribution formula. (1) The superintendent of public instruction shall phase-in the implementation of the distribution formula under this chapter for allocating state funds to school districts for the transportation of students to and from school.

The phase-in shall begin no later than the 2011-2013 biennium and be fully implemented by the 2013-2015 biennium.

(a) The formula must be developed and revised on an ongoing basis using the major cost factors in student transportation, including basic and special student loads, school district land area, average distance to school, roadway miles, and number of locations served. Factors must include all those site characteristics that are statistically significant after analysis of the data required by the revised reporting process.

(b) The formula must allocate funds to school districts based on the average predicted costs of transporting students to and from school, using a regression analysis. Only factors that are statistically significant shall be used in the regression analysis. Employee compensation costs included in the allowable transportation expenditures used for the purpose of establishing each school district's independent variable in the regression analysis shall be limited to the base salary or hourly wage rates, fringe benefit rates, and applicable health care rates provided in the omnibus appropriations act.

(2) During the phase-in period, funding provided to school districts for student transportation operations shall be distributed on the following basis:

(a) Annually, each school district shall receive the lesser of the previous school year's pupil transportation operations allocation, or the total of allowable pupil transportation expenditures identified on the previous school year's final expenditure report to the state plus district indirect expenses using the federal restricted indirect rate as calculated in the district annual financial report;

(b) Annually, the amount identified in (a) of this subsection shall be adjusted for any budgeted increases provided in the omnibus appropriations act for salaries or fringe benefits;

(c) Annually, any funds appropriated by the legislature in excess of the maintenance level funding amount for student transportation shall be distributed among school districts on a prorated basis using the difference between the amount identified in (a) adjusted by (b) of this subsection and the amount determined under the formula in RCW 28A.160.180; and

(d) Allocations provided to recognize the cost of depreciation to districts contracting with private carriers for student transportation shall be deducted from the allowable transportation expenditures in (a) of this subsection. [2011 1st sp.s. c 27 § 3; 2010 c 236 § 8; 2009 c 548 § 311.]

Effective date—2011 1st sp.s. c 27 §§ 1-3: See note following RCW 28A.150.220.

Effective date—2010 c 236 §§ 2, 3, 4, 8, 10, 13, and 14: See note following RCW 28A.150.260.

Effective date—2009 c 548 §§ 304-311: See note following RCW 28A.160.150.

Intent—2009 c 548: See note following RCW 28A.150.198.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

28A.160.225 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 5.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

[2011 RCW Supp—page 480]

Chapter 28A.165 RCW

LEARNING ASSISTANCE PROGRAM

Sections

28A.165.085 Condensed compliance reports—Second-class districts.

28A.165.085 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 6.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.170 RCW

SUBSTANCE ABUSE AWARENESS PROGRAM

Sections

28A.170.080 Grants—Substance abuse intervention. (*Effective January 1, 2012.*)

28A.170.095 Condensed compliance reports—Second-class districts.

28A.170.080 Grants—Substance abuse intervention. (*Effective January 1, 2012.*) (1) Grants provided under RCW 28A.170.090 may be used solely for services provided by a substance abuse intervention specialist or for dedicated staff time for counseling and intervention services provided by any school district certificated employee who has been trained by and has access to consultation with a substance abuse intervention specialist. Services shall be directed at assisting students in kindergarten through twelfth grade in overcoming problems of drug and alcohol abuse, and in preventing abuse and addiction to such substances, including nicotine. The grants shall require local matching funds so that the grant amounts support a maximum of eighty percent of the costs of the services funded. The services of a substance abuse intervention specialist may be obtained by means of a contract with a state or community services agency or a drug treatment center. Services provided by a substance abuse intervention specialist may include:

(a) Individual and family counseling, including preventive counseling;

(b) Assessment and referral for treatment;

(c) Referral to peer support groups;

(d) Aftercare;

(e) Development and supervision of student mentor programs;

(f) Staff training, including training in the identification of high-risk children and effective interaction with those children in the classroom; and

(g) Development and coordination of school drug and alcohol core teams, involving staff, students, parents, and community members.

(2) For the purposes of this section, "substance abuse intervention specialist" means any one of the following, except that diagnosis and assessment, counseling and after-care specifically identified with treatment of chemical dependency shall be performed only by personnel who meet the same qualifications as are required of a qualified chemical dependency counselor employed by an alcoholism or drug

treatment program approved by the department of social and health services.

(a) An educational staff associate employed by a school district or educational service district who holds certification as a school counselor, school psychologist, school nurse, or school social worker under Washington professional educator standards board rules adopted pursuant to RCW 28A.410.210;

(b) An individual who meets the definition of a qualified drug or alcohol counselor established by the bureau of alcohol and substance abuse;

(c) A qualified professional employed by the department of social and health services;

(d) A psychologist licensed under chapter 18.83 RCW; or

(e) A children's mental health specialist as defined in RCW 71.34.020. [2011 c 89 § 8; 2005 c 497 § 213; 1990 c 33 § 157; 1989 c 271 § 311. Formerly RCW 28A.120.082.]

Effective date—2011 c 89: See note following RCW 18.320.005.

Findings—2011 c 89: See RCW 18.320.005.

Intent—Part headings not law—Effective date—2005 c 497: See notes following RCW 28A.305.011.

Additional notes found at www.leg.wa.gov

28A.170.095 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 7.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.175 RCW

DROPOUT PREVENTION, INTERVENTION, AND RETRIEVAL SYSTEM

Sections

28A.175.035	Grants—Criteria and requirements—Data collection—Third-party evaluator—Report.
28A.175.120	Condensed compliance reports—Second-class districts.
28A.175.130	Pay for actual student success (PASS) program—Created—Finding—Collaboration.
28A.175.135	PASS program—Allocation of funds.
28A.175.140	PASS program—Duties of superintendent of public instruction.
28A.175.145	PASS program—Awards.
28A.175.150	PASS program—Graduation coach.
28A.175.155	PASS program—High school completion account.
28A.175.160	PASS program—Information regarding funds and awards—Development of strategies for dropout prevention and reengagement programs, planning, and improvement.

28A.175.035 Grants—Criteria and requirements—Data collection—Third-party evaluator—Report. (1) The office of the superintendent of public instruction shall:

(a) Identify criteria for grants and evaluate proposals for funding in consultation with the workforce training and education coordinating board;

(b) Develop and monitor requirements for grant recipients to:

(i) Identify students who both fail the Washington assessment of student learning and drop out of school;

(ii) Identify their own strengths and gaps in services provided to youth;

(ii) Set their own local goals for program outcomes;

(iv) Use research-based and emerging best practices that lead to positive outcomes in implementing the building bridges program; and

(v) Coordinate an outreach campaign to bring public and private organizations together and to provide information about the building bridges program to the local community;

(c) In setting the requirements under (b) of this subsection, encourage creativity and provide for flexibility in implementing the local building bridges program;

(d) Identify and disseminate successful practices;

(e) Develop requirements for grant recipients to collect and report data, including, but not limited to:

(i) The number of and demographics of students served including, but not limited to, information regarding a student's race and ethnicity, a student's household income, a student's housing status, whether a student is a foster youth or youth involved in the juvenile justice system, whether a student is disabled, and the primary language spoken at a student's home;

(ii) Washington assessment of student learning scores;

(iii) Dropout rates;

(iv) On-time graduation rates;

(v) Extended graduation rates;

(vi) Credentials obtained;

(vii) Absenteeism rates;

(viii) Truancy rates; and

(ix) Credit retrieval;

(f) Contract with a third party to evaluate the infrastructure and implementation of the partnership including the leveraging of outside resources that relate to the goal of the partnership. The third-party contractor shall also evaluate the performance and effectiveness of the partnerships relative to the type of entity, as identified in RCW 28A.175.045, serving as the lead agency for the partnership; and

(g) Report to the legislature by December 1, 2008.

(2) In performing its duties under this section, the office of the superintendent of public instruction is encouraged to consult with the work group identified in RCW 28A.175.075.

(3) In selecting recipients for grant funds appropriated under RCW 28A.175.135, the office of the superintendent of public instruction shall use a streamlined and expedited application and review process for those programs that have already proven to be successful in dropout prevention. [2011 c 288 § 9; 2007 c 408 § 3.]

Intent—Findings—2007 c 408: See note following RCW 28A.175.025.

28A.175.120 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 8.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

28A.175.130 Pay for actual student success (PASS) program—Created—Finding—Collaboration. (1) The pay for actual student success (PASS) program is created under this section and RCW 28A.175.135 through 28A.175.160 to invest in proven dropout prevention and

intervention programs as provided in RCW 28A.175.135 and provide a financial award for high schools that demonstrate improvement in the dropout prevention indicators established under RCW 28A.175.140. The legislature finds that increased accumulation of credits and reductions in incidents of student discipline lead to improved graduation rates.

(2) The office of the superintendent of public instruction, the workforce training and education coordinating board, the building bridges working group, the higher education coordinating board, and the college scholarship organization under RCW 28A.175.135(4) shall collaborate to assure that the programs under RCW 28A.175.135 operate systematically and are expanded to include as many additional students and schools as possible. [2011 c 288 § 2.]

28A.175.135 PASS program—Allocation of funds.

Subject to funds appropriated for this purpose, funds shall be allocated as specified in the omnibus appropriations act to support the PASS program through the following programs:

(1) The opportunity internship program under RCW 28C.18.160 through 28C.18.168;

(2) The jobs for America's graduates program administered through the office of the superintendent of public instruction;

(3) The building bridges program under RCW 28A.175.025, to be used to expand programs that have been implemented by building bridges partnerships and determined by the building bridges work group to be successful in reducing dropout rates, or to replicate such programs in new partnerships; and

(4) Individualized student support services provided by a college scholarship organization with expertise in managing scholarships for low-income, high potential students and foster care youth under contract with the higher education coordinating board, including but not limited to college and career advising, counseling, tutoring, community mentor programs, and leadership development. [2011 c 288 § 3.]

28A.175.140 PASS program—Duties of superintendent of public instruction. (1) The office of the superintendent of public instruction, in consultation with the state board of education, must:

(a) Calculate the annual extended graduation rate for each high school, which is the rate at which a class of students enters high school as freshmen and graduates with a high school diploma, including students who receive a high school diploma after the year they were expected to graduate. The office may statistically adjust the rate for student demographics in the high school, including the number of students eligible for free and reduced-price meals, special education and English language learner students, students of various racial and ethnic backgrounds, and student mobility;

(b) Annually calculate the proportion of students at grade level for each high school, which shall be measured by the number of credits a student has accumulated at the end of each school year compared to the total number required for graduation. For the purposes of this subsection (1)(b), the office shall adopt a standard definition of "at grade level" for each high school grade;

(c) Annually calculate the proportion of students in each high school who are suspended or expelled from school, as reported by the high school. In-school suspensions shall not be included in the calculation. Improvement on the indicator under this subsection (1)(c) shall be measured by a reduction in the number of students suspended or expelled from school; and

(d) Beginning with the 2012-13 school year, annually measure student attendance in each high school as provided under RCW 28A.300.046.

(2) The office of the superintendent of public instruction may add dropout prevention indicators to the list of indicators under subsection (1) of this section, such as student grades, state assessment mastery, or student retention.

(3) To the maximum extent possible, the office of the superintendent of public instruction shall rely on data collected through the comprehensive education data and research system to calculate the dropout prevention indicators under this section and shall minimize additional data collection from schools and school districts unless necessary to meet the requirements of this section.

(4) The office of the superintendent of public instruction shall develop a metric for measuring the performance of each high school on the indicators under subsection (1) of this section that assigns points for each indicator and results in a single numeric dropout prevention score for each high school. The office shall weight the extended graduation rate indicator within the metric so that a high school does not qualify for an award under RCW 28A.175.145 without an increase in its extended graduation rate. The metric used through the 2012-13 school year shall include the indicators in subsection (1)(a) through (c) of this section and shall measure improvement against the 2010-11 school year as the baseline year. Beginning in the 2013-14 school year, the metric shall also include the indicator in subsection (1)(d) of this section, with improvement in this indicator measured against the 2012-13 school year as the baseline year. The office may establish a minimum level of improvement in a high school's dropout prevention score for the high school to qualify for a PASS program award under RCW 28A.175.145. [2011 c 288 § 4.]

28A.175.145 PASS program—Awards. (1)(a) Subject to funds appropriated for this purpose or otherwise available in the account established in RCW 28A.175.155, beginning in the 2011-12 school year and each year thereafter, a high school that demonstrates improvement in its dropout prevention score compared to the baseline school year as calculated under RCW 28A.175.140 may receive a PASS program award as provided under this section. The legislature intends to recognize and reward continuous improvement by using a baseline year for calculating eligibility for PASS program awards so that a high school retains previously earned award funds from one year to the next unless its performance declines.

(b) The office of the superintendent of public instruction must determine the amount of PASS program awards based on appropriated funds and eligible high schools. The intent of the legislature is to provide an award to each eligible high school commensurate with the degree of improvement in the high school's dropout prevention score and the size of the high school. The office must establish a minimum award

amount. If funds available for PASS program awards are not sufficient to provide an award to each eligible high school, the office of the superintendent of public instruction shall establish objective criteria to prioritize awards based on eligible high schools with the greatest need for additional dropout prevention and intervention services. The office of the superintendent of public instruction shall encourage and may require a high school receiving a PASS program award to demonstrate an amount of community matching funds or an amount of in-kind community services to support dropout prevention and intervention.

(c) Ninety percent of an award under this section must be allocated to the eligible high school to be used for dropout prevention activities in the school as specified in subsection (2) of this section. The principal of the high school shall determine the use of funds after consultation with parents and certificated and classified staff of the school.

(d) Ten percent of an award under this section must be allocated to the school district in which the eligible high school is located to be used for dropout prevention activities as specified in subsection (2) of this section in the high school or in other schools in the district.

(e) The office of the superintendent of public instruction may withhold distribution of award funds under this section to an otherwise eligible high school or school district if the superintendent of public instruction issues a finding that the school or school district has willfully manipulated the dropout prevention indicators under RCW 28A.175.140, for example by expelling, suspending, transferring, or refusing to enroll students at risk of dropping out of school or at risk of low achievement.

(2) High schools and school districts may use PASS program award funds for any programs or activities that support the development of a dropout prevention, intervention, and reengagement system as described in RCW 28A.175.074, offered directly by the school or school district or under contract with education agencies or community-based organizations, including but not limited to educational service districts, workforce development councils, and boys and girls clubs. Such programs or activities may include but are not limited to the following:

(a) Strategies to close the achievement gap for disadvantaged students and minority students;

(b) Use of graduation coaches as defined in RCW 28A.175.150;

(c) Opportunity internship activities under RCW 28C.18.164;

(d) Dropout reengagement programs provided by community-based organizations or community and technical colleges;

(e) Comprehensive guidance and planning programs as defined under RCW 28A.600.045, including but not limited to the navigation 101 program;

(f) Reduced class sizes, extended school day, extended school year, and tutoring programs for students identified as at risk of dropping out of school, including instruction to assist these students in meeting graduation requirements in mathematics and science;

(g) Outreach and counseling targeted to students identified as at risk of dropping out of school, or who have dropped out of school, to encourage them to consider learning alterna-

tives such as preapprenticeship programs, skill centers, running start, technical high schools, and other options for completing a high school diploma;

(h) Preapprenticeship programs or running start for the trades initiatives under RCW 49.04.190;

(i) Mentoring programs for students;

(j) Development and use of dropout early warning data systems;

(k) Counseling, resource and referral services, and intervention programs to address social, behavioral, and health factors associated with dropping out of school;

(l) Implementing programs for in-school suspension or other strategies to avoid excluding middle and high school students from the school whenever possible;

(m) Parent engagement activities such as home visits and off-campus parent support group meetings related to dropout prevention and reengagement; and

(n) Early learning programs for prekindergarten students.

(3) High schools and school districts are encouraged to implement dropout prevention and reengagement strategies in a comprehensive and systematic manner, using strategic planning, school improvement plans, evaluation and feedback, and response to intervention tools. [2011 c 288 § 5.]

28A.175.150 PASS program—Graduation coach.

For the purposes of RCW 28A.175.145, a "graduation coach" means a staff person, working in consultation with counselors, who is assigned to identify and provide intervention services to students who have dropped out or are at risk of dropping out of school or of not graduating on time through the following activities:

(1) Monitoring and advising on individual student progress toward graduation;

(2) Providing student support services and case management;

(3) Motivating students to focus on a graduation plan;

(4) Encouraging parent and community involvement;

(5) Connecting parents and students with appropriate school and community resources;

(6) Securing supplemental academic services for students;

(7) Implementing schoolwide dropout prevention programs and interventions; and

(8) Analyzing data to identify at-risk students. [2011 c 288 § 6.]

28A.175.155 PASS program—High school completion account. The high school completion account is created in the custody of the state treasurer. Revenues to the account shall consist of appropriations made by the legislature, federal funds, gifts or grants from the private sector or foundations, and other sources deposited in the account. Expenditures from the account may be used only for proven dropout prevention and intervention programs identified under RCW 28A.175.135 and to make PASS program awards under RCW 28A.175.145. Only the superintendent of public instruction or the superintendent's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an

appropriation is not required for expenditures. [2011 c 288 § 7.]

28A.175.160 PASS program—Information regarding funds and awards—Development of strategies for dropout prevention and reengagement programs, planning, and improvement. The office of the superintendent of public instruction must regularly inform high schools and school districts about the opportunities under RCW 28A.175.135 to receive funding to implement programs that have been proven to reduce dropout rates and increase graduation rates, as well as the opportunities under RCW 28A.175.145 for high schools to receive a financial incentive for success. Within available funds, the office shall develop systemic, ongoing strategies for identifying and disseminating successful dropout prevention and reengagement programs and strategies and for incorporating dropout prevention and reengagement into high school and school district strategic planning and improvement. The office may offer support and assistance to schools and districts through regional networks. The office shall make every effort to keep dropout prevention and reduction of the dropout rate a top priority for school directors, administrators, and teachers. [2011 c 288 § 8.]

Chapter 28A.180 RCW TRANSITIONAL BILINGUAL INSTRUCTION PROGRAM

Sections

28A.180.110 Condensed compliance reports—Second-class districts.

28A.180.110 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 9.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.185 RCW HIGHLY CAPABLE STUDENTS

Sections

28A.185.060 Condensed compliance reports—Second-class districts.

28A.185.060 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 10.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.200 RCW HOME-BASED INSTRUCTION

Sections

28A.200.030 Condensed compliance reports—Second-class districts.

28A.200.030 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 11.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.210 RCW HEALTH—SCREENING AND REQUIREMENTS

Sections

28A.210.090 Immunization program—Exemptions.

28A.210.385 Condensed compliance reports—Second-class districts.

28A.210.090 Immunization program—Exemptions. (1) Any child shall be exempt in whole or in part from the immunization measures required by RCW 28A.210.060 through 28A.210.170 upon the presentation of any one or more of the certifications required by this section, on a form prescribed by the department of health:

(a) A written certification signed by a health care practitioner that a particular vaccine required by rule of the state board of health is, in his or her judgment, not advisable for the child: PROVIDED, That when it is determined that this particular vaccine is no longer contraindicated, the child will be required to have the vaccine;

(b) A written certification signed by any parent or legal guardian of the child or any adult in loco parentis to the child that the religious beliefs of the signator are contrary to the required immunization measures; or

(c) A written certification signed by any parent or legal guardian of the child or any adult in loco parentis to the child that the signator has either a philosophical or personal objection to the immunization of the child.

(2)(a) The form presented on or after July 22, 2011, must include a statement to be signed by a health care practitioner stating that he or she provided the signator with information about the benefits and risks of immunization to the child. The form may be signed by a health care practitioner at any time prior to the enrollment of the child in a school or licensed day care. Photocopies of the signed form or a letter from the health care practitioner referencing the child's name shall be accepted in lieu of the original form.

(b) A health care practitioner who, in good faith, signs the statement provided for in (a) of this subsection is immune from civil liability for providing the signature.

(c) Any parent or legal guardian of the child or any adult in loco parentis to the child who exempts the child due to religious beliefs pursuant to subsection (1)(b) of this section is not required to have the form provided for in (a) of this subsection signed by a health care practitioner if the parent or legal guardian demonstrates membership in a religious body or a church in which the religious beliefs or teachings of the church preclude a health care practitioner from providing medical treatment to the child.

(3) For purposes of this section, "health care practitioner" means a physician licensed under chapter 18.71 or 18.57 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or an advanced registered nurse practitioner licensed

under chapter 18.79 RCW. [2011 c 299 § 1; 1991 c 3 § 290; 1990 c 33 § 193; 1984 c 40 § 5; 1979 ex.s. c 118 § 4. Formerly RCW 28A.31.106.]

Additional notes found at www.leg.wa.gov

28A.210.385 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 12.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.215 RCW

EARLY CHILDHOOD, PRESCHOOLS, AND BEFORE-AND-AFTER SCHOOL CARE

Sections

28A.215.070 Condensed compliance reports—Second-class districts.

28A.215.070 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 13.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.220 RCW

TRAFFIC SAFETY

Sections

28A.220.030 Administration of program—Powers and duties of school officials—Administration of knowledge and driving portions of driver licensing examination.

28A.220.090 Condensed compliance reports—Second-class districts.

28A.220.030 Administration of program—Powers and duties of school officials—Administration of knowledge and driving portions of driver licensing examination. (1) The superintendent of public instruction is authorized to establish a section of traffic safety education, and through such section shall: Define a "realistic level of effort" required to provide an effective traffic safety education course, establish a level of driving competency required of each student to successfully complete the course, and ensure that an effective statewide program is implemented and sustained, administer, supervise, and develop the traffic safety education program and shall assist local school districts in the conduct of their traffic safety education programs. The superintendent shall adopt necessary rules and regulations governing the operation and scope of the traffic safety education program; and each school district shall submit a report to the superintendent on the condition of its traffic safety education program: PROVIDED, That the superintendent shall monitor the quality of the program and carry out the purposes of this chapter.

(2) The board of directors of any school district maintaining a secondary school which includes any of the grades 10 to 12, inclusive, may establish and maintain a traffic safety education course. If a school district elects to offer a traffic

safety education course and has within its boundaries a private accredited secondary school which includes any of the grades 10 to 12, inclusive, at least one class in traffic safety education shall be given at times other than regular school hours if there is sufficient demand therefor.

(3) The board of directors of a school district, or combination of school districts, may contract with any drivers' school licensed under the provisions of chapter 46.82 RCW to teach the laboratory phase of the traffic safety education course. Instructors provided by any such contracting drivers' school must be properly qualified teachers of traffic safety education under the joint qualification requirements adopted by the superintendent of public instruction and the director of licensing.

(4) The superintendent shall establish a required minimum number of hours of continuing traffic safety education for traffic safety education instructors. The superintendent may phase in the requirement over not more than five years.

(5) School districts that offer a traffic safety education program under this chapter may administer the portions of the driver licensing examination that test the applicant's knowledge of traffic laws and ability to safely operate a motor vehicle as authorized under RCW 46.20.120(7). The superintendent shall work with the department of licensing, in consultation with school districts that offer a traffic safety education program, to develop standards and requirements for administering each portion of the driver licensing examination that are comparable to the standards and requirements for driver training schools under RCW 46.82.450.

(6) Before a school district may provide a portion of the driver licensing examination, the school district must, after consultation with the superintendent, enter into an agreement with the department of licensing that sets forth an accountability and audit process that takes into account the unique nature of school district facilities and school hours and, at a minimum, contains provisions that:

(a) Allow the department of licensing to conduct random examinations, inspections, and audits without prior notice;

(b) Allow the department of licensing to conduct on-site inspections at least annually;

(c) Allow the department of licensing to test, at least annually, a random sample of the drivers approved by the school district for licensure and to cancel any driver's license that may have been issued to any driver selected for testing who refuses to be tested; and

(d) Reserve to the department of licensing the right to take prompt and appropriate action against a school district that fails to comply with state or federal standards for a driver licensing examination or to comply with any terms of the agreement. [2011 c 370 § 2; 2000 c 115 § 9; 1979 c 158 § 196; 1977 c 76 § 3; 1969 ex.s. c 218 § 2; 1963 c 39 § 3. Formerly RCW 28A.08.020, 46.81.020.]

Intent—2011 c 370: "It is the intent of the legislature to utilize the infrastructure and resources of the commercial driver training schools and the school districts' traffic safety education programs by authorizing these entities to provide driver licensing examinations. The legislature intends for the department of licensing to authorize the administration of driver licensing examinations by these entities in order to maintain and reprioritize its staff for the purpose of reducing the wait times at its driver licensing offices.

Further, the legislature recognizes the growing importance of the work performed by department of licensing driver licensing services employees, who play an increasingly vital role in our security by ensuring that applicants are properly issued identification." [2011 c 370 § 1.]

Inclusion of stakeholder groups in communications to facilitate transition of driver licensing examination administration—2011 c 370: See note following RCW 46.82.450.

Finding—2000 c 115: See note following RCW 46.20.075.

Additional notes found at www.leg.wa.gov

28A.220.090 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 14.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.225 RCW

COMPULSORY SCHOOL ATTENDANCE AND ADMISSION

Sections

28A.225.155 Condensed compliance reports—Second-class districts.

28A.225.155 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 15.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.230 RCW

COMPULSORY COURSE WORK AND ACTIVITIES

Sections

28A.230.090 High school graduation requirements or equivalencies—Reevaluation of graduation requirements—Review and authorization of proposed changes—Credit for courses taken before attending high school—Postsecondary credit equivalencies.

28A.230.095 Essential academic learning requirements and assessments—Verification reports. (*Effective July 1, 2012.*)

28A.230.122 International baccalaureate diplomas.

28A.230.125 Development of standardized high school transcripts. (*Effective July 1, 2012.*)

28A.230.130 Program to help students meet minimum entrance requirements at baccalaureate-granting institutions or to pursue career or other opportunities—High school course offerings for postsecondary credit.

28A.230.170 Study of constitutions compulsory—Rules.

28A.230.178 Civil rights education.

28A.230.265 Condensed compliance reports—Second-class districts.

28A.230.090 High school graduation requirements or equivalencies—Reevaluation of graduation requirements—Review and authorization of proposed changes—Credit for courses taken before attending high school—Postsecondary credit equivalencies. (1) The state board of education shall establish high school graduation requirements or equivalencies for students, except as provided in RCW 28A.230.122 and except those equivalencies established by local high schools or school districts under RCW 28A.230.097. The purpose of a high school diploma is to declare that a student is ready for success in postsecondary education, gainful employment, and citizenship, and is equipped with the skills to be a lifelong learner.

[2011 RCW Supp—page 486]

(a) Any course in Washington state history and government used to fulfill high school graduation requirements shall consider including information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(b) The certificate of academic achievement requirements under RCW 28A.655.061 or the certificate of individual achievement requirements under RCW 28A.155.045 are required for graduation from a public high school but are not the only requirements for graduation.

(c) Any decision on whether a student has met the state board's high school graduation requirements for a high school and beyond plan shall remain at the local level.

(2)(a) In recognition of the statutory authority of the state board of education to establish and enforce minimum high school graduation requirements, the state board shall periodically reevaluate the graduation requirements and shall report such findings to the legislature in a timely manner as determined by the state board.

(b) The state board shall reevaluate the graduation requirements for students enrolled in vocationally intensive and rigorous career and technical education programs, particularly those programs that lead to a certificate or credential that is state or nationally recognized. The purpose of the evaluation is to ensure that students enrolled in these programs have sufficient opportunity to earn a certificate of academic achievement, complete the program and earn the program's certificate or credential, and complete other state and local graduation requirements.

(c) The state board shall forward any proposed changes to the high school graduation requirements to the education committees of the legislature for review and to the quality education council established under RCW 28A.290.010. The legislature shall have the opportunity to act during a regular legislative session before the changes are adopted through administrative rule by the state board. Changes that have a fiscal impact on school districts, as identified by a fiscal analysis prepared by the office of the superintendent of public instruction, shall take effect only if formally authorized and funded by the legislature through the omnibus appropriations act or other enacted legislation.

(3) Pursuant to any requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district graduation requirement for instruction in one or more languages other than English.

(4) If requested by the student and his or her family, a student who has completed high school courses before attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be required to take an additional competency examination or perform any other additional assignment to receive credit.

(6) At the college or university level, five quarter or three semester hours equals one high school credit. [2011 c 203 § 2. Prior: 2009 c 548 § 111; 2009 c 223 § 2; 2006 c 114 § 3; 2005 c 205 § 3; 2004 c 19 § 103; 1997 c 222 § 2; 1993 c 371 § 3; prior: 1992 c 141 § 402; 1992 c 60 § 1; 1990 1st ex.s. c 9 § 301; 1988 c 172 § 1; 1985 c 384 § 2; 1984 c 278 § 6. Formerly RCW 28A.05.060.]

Intent—2009 c 548: See note following RCW 28A.150.198.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Finding—2009 c 223: "The legislature finds that although the United States has long exemplified democratic practice to the rest of the world, we ought not to neglect it at home. Two-thirds of our nation's twelfth graders scored below proficient on the last national civics assessment, and fewer than ten percent could list two ways that a democracy benefits from citizen participation. A healthy democracy depends on the participation of citizens. But participation is learned behavior, and in recent years civic learning has been pushed aside. Preparation for citizenship is as important as preparation for college and a career, and should take its place as a requirement for receiving a high school diploma." [2009 c 223 § 1.]

Finding—Intent—2006 c 114: See note following RCW 28A.230.097.

Intent—Findings—2005 c 205: See note following RCW 28A.320.170.

Part headings and captions not law—Severability—Effective date—2004 c 19: See notes following RCW 28A.655.061.

Intent—1997 c 222: "In 1994, the legislature directed the higher education board and the state board of education to convene a task force to examine and provide recommendations on establishing credit equivalencies. In November 1994, the task force recommended unanimously that the state board of education maintain the definition of five quarter or three semester college credits as equivalent to one high school credit. Therefore, the legislature intends to adopt the recommendations of the task force." [1997 c 222 § 1.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

Additional notes found at www.leg.wa.gov

28A.230.095 Essential academic learning requirements and assessments—Verification reports. (Effective July 1, 2012.) (1) By the end of the 2008-09 school year, school districts shall have in place in elementary schools, middle schools, and high schools assessments or other strategies chosen by the district to assure that students have an opportunity to learn the essential academic learning requirements in social studies, the arts, and health and fitness. Social studies includes history, geography, civics, economics, and social studies skills. Health and fitness includes, but is not limited to, mental health and suicide prevention education. Beginning with the 2008-09 school year, school districts shall annually submit an implementation verification report to the office of the superintendent of public instruction. The office

of the superintendent of public instruction may not require school districts to use a classroom-based assessment in social studies, the arts, and health and fitness to meet the requirements of this section and shall clearly communicate to districts their option to use other strategies chosen by the district.

(2) Beginning with the 2008-09 school year, school districts shall require students in the seventh or eighth grade, and the eleventh or twelfth grade to each complete at least one classroom-based assessment in civics. Beginning with the 2010-11 school year, school districts shall require students in the fourth or fifth grade to complete at least one classroom-based assessment in civics. The civics assessment may be selected from a list of classroom-based assessments approved by the office of the superintendent of public instruction. Beginning with the 2008-09 school year, school districts shall annually submit implementation verification reports to the office of the superintendent of public instruction documenting the use of the classroom-based assessments in civics.

(3) Verification reports shall require school districts to report only the information necessary to comply with this section. [2011 c 185 § 5; 2009 c 556 § 8; 2006 c 113 § 2; 2004 c 19 § 203.]

Effective date—2011 c 185 § 5: "Section 5 of this act takes effect July 1, 2012." [2011 c 185 § 6.]

Finding—2011 c 185: See note following RCW 28A.300.2851.

Findings—2006 c 113: "The legislature finds that instruction in social studies, arts, health, and fitness is important to ensure a well-rounded and complete education. In particular, the civic mission of schools is strengthened and enhanced by comprehensive civics education and assessments. The legislature finds that effective and accountable democratic government depends upon an informed and engaged citizenry, and therefore, students should learn their rights and responsibilities as citizens, where those rights and responsibilities come from, and how to exercise them." [2006 c 113 § 1.]

Part headings and captions not law—Severability—Effective date—2004 c 19: See notes following RCW 28A.655.061.

28A.230.122 International baccalaureate diplomas.

(1) A student who fulfills the requirements specified in subsection (3) of this section toward completion of an international baccalaureate diploma programme is considered to have satisfied state minimum requirements for graduation from a public high school, except that:

(a) The provisions of RCW 28A.655.061 regarding the certificate of academic achievement or RCW 28A.155.045 regarding the certificate of individual achievement apply to students under this section; and

(b) The provisions of RCW 28A.230.170 regarding study of the United States Constitution and the Washington state Constitution apply to students under this section.

(2) School districts may require students under this section to complete local graduation requirements that are in addition to state minimum requirements before issuing a high school diploma under RCW 28A.230.120. However, school districts are encouraged to waive local requirements as necessary to encourage students to pursue an international baccalaureate diploma.

(3) To receive a high school diploma under this section, a student must complete and pass all required international baccalaureate diploma programme courses as scored at the local level; pass all internal assessments as scored at the local level; successfully complete all required projects and prod-

ucts as scored at the local level; and complete the final examinations administered by the international baccalaureate organization in each of the required subjects under the diploma programme. [2011 c 203 § 1.]

28A.230.125 Development of standardized high school transcripts. (Effective July 1, 2012.) (1) The superintendent of public instruction, in consultation with the four-year institutions as defined in RCW 28B.76.020, the state board for community and technical colleges, and the workforce training and education coordinating board, shall develop for use by all public school districts a standardized high school transcript. The superintendent shall establish clear definitions for the terms "credits" and "hours" so that school programs operating on the quarter, semester, or trimester system can be compared.

(2) The standardized high school transcript shall include a notation of whether the student has earned a certificate of individual achievement or a certificate of academic achievement. [2011 1st sp.s. c 11 § 130; 2009 c 556 § 9. Prior: 2006 c 263 § 401; 2006 c 115 § 6; 2004 c 19 § 108; 1984 c 178 § 1. Formerly RCW 28A.305.220, 28A.04.155.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Part headings and captions not law—Severability—Effective date—2004 c 19: See notes following RCW 28A.655.061.

High school diplomas—Receiving final transcript optional: RCW 28A.230.120.

28A.230.130 Program to help students meet minimum entrance requirements at baccalaureate-granting institutions or to pursue career or other opportunities—High school course offerings for postsecondary credit. (1) All public high schools of the state shall provide a program, directly or in cooperation with a community college or another school district, for students whose educational plans include application for entrance to a baccalaureate-granting institution after being granted a high school diploma. The program shall help these students to meet at least the minimum entrance requirements under RCW 28B.10.050.

(2) All public high schools of the state shall provide a program, directly or in cooperation with a community or technical college, a skills center, an apprenticeship committee, or another school district, for students who plan to pursue career or work opportunities other than entrance to a baccalaureate-granting institution after being granted a high school diploma. These programs may:

(a) Help students demonstrate the application of essential academic learning requirements to the world of work, occupation-specific skills, knowledge of more than one career in a chosen pathway, and employability and leadership skills; and

(b) Help students demonstrate the knowledge and skill needed to prepare for industry certification, and/or have the opportunity to articulate to postsecondary education and training programs.

(3) Within existing resources, all public high schools in the state shall:

(a) Work towards the goal of offering a sufficient number of high school courses that give students the opportunity to earn the equivalent of a year's worth of postsecondary credit towards a certificate, apprenticeship program, technical degree, or associate or baccalaureate degree. These high school courses are those advanced courses that have accompanying proficiency exams or demonstrated competencies that are used to demonstrate postsecondary knowledge and skills; and

(b) Inform students and their families, emphasizing communication to underrepresented groups, about the program offerings and the opportunities to take courses that qualify for postsecondary credit through demonstrated competencies or if the student earns the qualifying score on the proficiency exam. This information shall encourage students to use the twelfth grade as the launch year for an advance start on their career and postsecondary education.

(4) A middle school that receives approval from the office of the superintendent of public instruction to provide a career and technical program in science, technology, engineering, or mathematics directly to students shall receive funding at the same rate as a high school operating a similar program. Additionally, a middle school that provides a hands-on experience in science, technology, engineering, or mathematics with an integrated curriculum of academic content and career and technical education, and includes a career and technical education exploratory component shall also qualify for the career and technical education funding. [2011 c 77 § 2; 2009 c 212 § 2; 2007 c 396 § 14; (2007 c 396 § 13 expired September 1, 2009); 2006 c 263 § 407; 2003 c 49 § 2; 1991 c 116 § 9; 1988 c 172 § 2; 1984 c 278 § 16. Formerly RCW 28A.05.070.]

Findings—Intent—2011 c 77: "The legislature finds that approximately thirty-five percent of seniors in Washington high schools take less than a full load of classes during their senior year. The legislature further finds that many high schools provide students opportunities to take advanced courses in career and technical or academic fields that give students a head start when they begin their career or enter a technical training program or a college or university. The legislature also finds that since each individual institution of higher education adopts its own rules for awarding credit for advanced high school work, students can encounter unanticipated barriers to advancing their dreams. Students can also be discouraged from putting in that extra effort in high school if they are not certain whether their extra work will be appropriately credited toward a certificate or degree.

The legislature intends to help students progress from high school to a certificate or degree by increasing opportunities and providing a clear pathway. Twelfth grade will truly be the launch year as high schools increase the opportunities for students to take more advanced classes. In addition, this act provides for community and technical colleges and four-year institutions of higher education to publish a list of high school courses and adopt uniform scores for proficiency exams or competency requirements that will be given credit toward certificate or degree requirements." [2011 c 77 § 1.]

Short title—2011 c 77: "This act may be known and cited as the launch year act." [2011 c 77 § 5.]

Effective date—2009 c 212 § 2: "Section 2 of this act takes effect September 1, 2009." [2009 c 212 § 3.]

Finding—2009 c 212: "The legislature finds that significant efforts are under way to improve mathematics and science instruction in Washington's public schools through development and adoption of new learning standards, identification of aligned curriculum, and expanded opportunities for professional development for teachers. A significant emphasis has also been made on improving career and technical education programs focused on high-demand programs. Middle schools have successfully served one thousand four hundred full-time equivalent students in career and technical programs rich in science, technology, engineering, and mathematics through a grant program. The legislature concludes that opportunities for hands-on and applied learning in these programs should be extended to middle school stu-

dents on an ongoing, statewide basis so that students are prepared to take advantage of more advanced coursework in high school and postsecondary education." [2009 c 212 § 1.]

Effective date—2007 c 396 § 14: "Section 14 of this act takes effect September 1, 2009." [2007 c 396 § 21.]

Expiration date—2007 c 396 § 13: "Section 13 of this act expires September 1, 2009." [2007 c 396 § 20.]

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Effective date—2006 c 263 § 407: "Section 407 of this act takes effect September 1, 2009." [2006 c 263 § 1002.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Additional notes found at www.leg.wa.gov

28A.230.170 Study of constitutions compulsory—

Rules. The study of the Constitution of the United States and the Constitution of the state of Washington shall be a condition prerequisite to graduation from the public and private high schools of this state. The superintendent of public instruction shall provide by rule for the implementation of this section. The superintendent of public instruction may adopt a rule permitting students who meet the criteria in RCW 28A.230.122 to meet the prerequisite through non-credit-based study. [2011 c 203 § 3; 2006 c 263 § 403; 1985 c 341 § 1; 1969 ex.s. c 223 § 28A.02.080. Prior: (i) 1925 ex.s. c 134 § 1; RRS § 4898-1. (ii) 1925 ex.s. c 134 § 2; RRS § 4898-2. Formerly RCW 28A.02.080, 28.02.080, and 28.02.081.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

28A.230.178 Civil rights education. School districts are encouraged to prepare and conduct a program at least once a year to commemorate the history of civil rights in our nation, including providing an opportunity for students to learn about the personalities and convictions of heroes of the civil rights movement and the importance of the fundamental principle and promise of equality under our nation's Constitution. [2011 c 44 § 2.]

Findings—2011 c 44: "The legislature finds that:

(1) The civil rights movement did not begin or end with the dramatic events of the 1950s and 1960s. Since our nation's founding, ordinary citizens have struggled to fulfill America's promise of equality under the law.

(2) Heroes of the civil rights movement include those who are well known such as Thurgood Marshall, Rosa Parks, Cesar Chavez, and Dr. Martin Luther King, Jr. But the list of heroes also includes those who are perhaps less well known, but each of whom gave something of themselves on behalf of their fellow citizens and in defense of equality and justice.

(3) The significant milestones and fundamental principles of civil rights should be a part of every student's understanding of our nation's history. School districts should not only try to incorporate the history of civil rights into their regular curriculum at all grade levels, but should also take the opportunity to make this history come alive through the personalities and convictions of civil rights heroes." [2011 c 44 § 1.]

28A.230.265 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 16.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.235 RCW

FOOD SERVICES

Sections

28A.235.036 Condensed compliance reports—Second-class districts.

28A.235.036 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 17.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.250 RCW

ONLINE LEARNING

Sections

28A.250.005 Findings—Intent.

28A.250.010 Definitions.

28A.250.020 Multidistrict online providers—Approval criteria—Advisory committee.

28A.250.030 Office of online learning—Duties.

28A.250.048 Condensed compliance reports—Second-class districts.

28A.250.050 Student access to online courses and online learning programs—Policies and procedures—Course credit—Dissemination of information—Development of local or regional online learning programs.

28A.250.060 Availability of state funding for students enrolled in online courses or programs.

28A.250.005 Findings—Intent. (1) The legislature finds that online learning provides tremendous opportunities for students to access curriculum, courses, and a unique learning environment that might not otherwise be available. The legislature supports and encourages online learning opportunities.

(2) However, the legislature also finds that there is a need to assure quality in online learning, both for the programs and the administration of those programs. The legislature is the steward of public funds that support students enrolled in online learning and must ensure an appropriate accountability system at the state level.

(3) Therefore, the legislature intends to take a first step in improving oversight and quality assurance of online learning programs, and intends to examine possible additional steps that may need to be taken to improve financial accountability.

(4) The first step in improving quality assurance is to:

(a) Provide objective information to students, parents, and educators regarding available online learning opportunities, including program and course content, how to register for programs and courses, teacher qualifications, student-to-teacher ratios, prior course completion rates, and other evaluative information;

(b) Create an approval process for online providers;

(c) Enhance statewide equity of student access to high quality online learning opportunities; and

(d) Require school district boards of directors to develop policies and procedures for student access to online learning opportunities. [2011 1st sp.s. c 34 § 4; 2009 c 542 § 1.]

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

28A.250.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Multidistrict online provider" means:

(i) A private or nonprofit organization that enters into a contract with a school district to provide online courses or programs to K-12 students from more than one school district;

(ii) A private or nonprofit organization that enters into contracts with multiple school districts to provide online courses or programs to K-12 students from those districts; or

(iii) Except as provided in (b) of this subsection, a school district that provides online courses or programs to students who reside outside the geographic boundaries of the school district.

(b) "Multidistrict online provider" does not include a school district online learning program in which fewer than ten percent of the students enrolled in the program are from other districts under the interdistrict student transfer provisions of RCW 28A.225.225. "Multidistrict online provider" also does not include regional online learning programs that are jointly developed and implemented by two or more school districts or an educational service district through an interdistrict cooperative program agreement that addresses, at minimum, how the districts share student full-time equivalency for state basic education funding purposes and how categorical education programs, including special education, are provided to eligible students.

(2)(a) "Online course" means a course where:

(i) More than half of the course content is delivered electronically using the internet or other computer-based methods; and

(ii) More than half of the teaching is conducted from a remote location through an online course learning management system or other online or electronic tools.

(b) "Online school program" means a school program that:

(i) Offers courses or grade-level coursework that is delivered primarily electronically using the internet or other computer-based methods;

(ii) Offers courses or grade-level coursework that is taught by a teacher primarily from a remote location using online or other electronic tools. Students enrolled in an online program may have access to the teacher synchronously, asynchronously, or both;

(iii) Offers a sequential set of online courses or grade-level coursework that may be taken in a single school term or throughout the school year in a manner that could provide a full-time basic education program if so desired by the student. Students may enroll in the program as part-time or full-time students; and

(iv) Has an online component of the program with online lessons and tools for student and data management.

(c) An online course or online school program may be delivered to students at school as part of the regularly scheduled school day. An online course or online school program also may be delivered to students, in whole or in part, independently from a regular classroom schedule, but such courses or programs must comply with RCW 28A.150.262 to qualify for state basic education funding.

(3) "Online provider" means any provider of an online course or program, including multidistrict online providers, all school district online learning programs, and all regional online learning programs. [2011 1st sp.s. c 34 § 5; 2009 c 542 § 2.]

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

28A.250.020 Multidistrict online providers—Approval criteria—Advisory committee. (1) The superintendent of public instruction, in collaboration with the state board of education, shall develop and implement approval criteria and a process for approving online providers; a process for monitoring and if necessary rescinding the approval of courses or programs offered by an online provider; and an appeals process. The criteria and processes for multidistrict online providers shall be adopted by rule by December 1, 2009.

(2) When developing the approval criteria, the superintendent of public instruction shall require that providers offering online courses or programs have accreditation through the Northwest accreditation commission or another national, regional, or state accreditation program listed by the office of the superintendent of public instruction after consultation with the Washington coalition for online learning. In addition to other criteria, the approval criteria shall include the degree of alignment with state academic standards and require that all teachers be certificated in accordance with Washington state law. When reviewing online providers that offer high school courses, the superintendent of public instruction shall assure that the courses offered by the provider are eligible for high school credit. However, final decisions regarding whether credit meets the school district's graduation requirements shall remain the responsibility of the school districts.

(3) Initial approval of online providers by the superintendent of public instruction shall be for four years. The superintendent of public instruction shall develop a process for the renewal of approvals and for rescinding approvals based on noncompliance with approval requirements. Any multidistrict online provider that was approved by the digital learning commons or accredited by the Northwest association of accredited schools before July 26, 2009, and that meets the teacher certification requirements of subsection (2) of this section, is exempt from the initial approval process under this section until August 31, 2012, but must comply with the process for renewal of approvals and must comply with approval requirements.

(4) The superintendent of public instruction shall make the first round of decisions regarding approval of multidistrict online providers by April 1, 2010. The first round of decisions regarding approval of online providers that are not multidistrict online providers shall be made by April 1, 2013. Thereafter, the superintendent of public instruction shall make annual approval decisions no later than November 1st of each year.

(5) The superintendent of public instruction shall establish an online learning advisory committee within existing resources that shall provide advice to the superintendent regarding the approval criteria, major components of the web site, the model school district policy, model agreements, and

other related matters. The committee shall include a representative of each of the following groups: Private and public online providers, parents of online students, accreditation organizations, educational service districts, school principals, teachers, school administrators, school board members, institutions of higher education, and other individuals as determined by the superintendent. Members of the advisory committee shall be selected by the superintendent based on nominations from statewide organizations, shall serve three-year terms, and may be reappointed. The superintendent shall select the chair of the committee. [2011 1st sp.s. c 34 § 6; 2009 c 542 § 3.]

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

28A.250.030 Office of online learning—Duties. The superintendent of public instruction shall create an office of online learning. In the initial establishment of the office, the superintendent shall hire staff who have been employed by the digital learning commons to the extent such hiring is in accordance with state law and to the extent funds are available. The office shall:

(1) Develop and maintain a web site that provides objective information for students, parents, and educators regarding online learning opportunities offered by online providers that have been approved in accordance with RCW 28A.250.020. The web site shall include information regarding the online course provider's overall instructional program, specific information regarding the content of individual online courses and online school programs, a direct link to each online course provider's web site, how to register for online learning programs and courses, teacher qualifications, student-to-teacher ratios, course completion rates, and other evaluative and comparative information. The web site shall also provide information regarding the process and criteria for approving online providers. To the greatest extent possible, the superintendent shall use the framework of the course offering component of the web site developed by the digital learning commons;

(2) Develop model agreements with approved online providers that address standard contract terms and conditions that may apply to contracts between a school district and the approved provider. The purpose of the agreements is to provide a template to assist individual school districts, at the discretion of the district, in contracting with online providers to offer the online provider's courses and programs to students in the district. The agreements may address billing, fees, responsibilities of online course providers and school districts, and other issues; and

(3) In collaboration with the educational service districts:

(a) Provide technical assistance and support to school district personnel through the educational technology centers in the development and implementation of online learning programs in their districts; and

(b) To the extent funds are available, provide online learning tools for students, teachers, administrators, and other educators. [2011 1st sp.s. c 34 § 7; 2009 c 542 § 4.]

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

28A.250.048 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 18.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

28A.250.050 Student access to online courses and online learning programs—Policies and procedures—Course credit—Dissemination of information—Development of local or regional online learning programs. (1) By August 31, 2010, all school district boards of directors shall develop policies and procedures regarding student access to online courses and online learning programs. The policies and procedures shall include but not be limited to: Student eligibility criteria; the types of online courses available to students through the school district; the methods districts will use to support student success, which may include a local advisor; when the school district will and will not pay course fees and other costs; the granting of high school credit; and a process for students and parents or guardians to formally acknowledge any course taken for which no credit is given. The policies and procedures shall take effect beginning with the 2010-11 school year. School districts shall submit their policies to the superintendent of public instruction by September 15, 2010. By December 1, 2010, the superintendent of public instruction shall summarize the school district policies regarding student access to online courses and submit a report to the legislature.

(2) School districts must award credit for online high school courses successfully completed by a student that meet the school district's graduation requirements and are provided by an approved online provider.

(3) School districts shall provide students with information regarding online courses that are available through the school district. The information shall include the types of information described in subsection (1) of this section.

(4) When developing local or regional online learning programs, school districts shall incorporate into the program design the approval criteria developed by the superintendent of public instruction under RCW 28A.250.020. [2011 1st sp.s. c 34 § 11; 2009 c 542 § 6.]

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

28A.250.060 Availability of state funding for students enrolled in online courses or programs. (1) Beginning with the 2011-12 school year, school districts may claim state funding under RCW 28A.150.260, to the extent otherwise allowed by state law, for students enrolled in online courses or programs only if the online courses or programs are:

(a) Offered by a multidistrict online provider approved under RCW 28A.250.020 by the superintendent of public instruction;

(b) Offered by a school district online learning program if the program serves students who reside within the geographic boundaries of the school district, including school district programs in which fewer than ten percent of the

gram's students reside outside the school district's geographic boundaries; or

(c) Offered by a regional online learning program where courses are jointly developed and offered by two or more school districts or an educational service district through an interdistrict cooperative program agreement.

(2) Beginning with the 2013-14 school year, school districts may claim state funding under RCW 28A.150.260, to the extent otherwise allowed by state law, for students enrolled in online courses or programs only if the online courses or programs are offered by an online provider approved under RCW 28A.250.020 by the superintendent of public instruction.

(3) Criteria shall be established by the superintendent of public instruction to allow online courses that have not been approved by the superintendent of public instruction to be eligible for state funding if the course is in a subject matter in which no courses have been approved and, if it is a high school course, the course meets Washington high school graduation requirements. [2011 1st sp.s. c 34 § 8; 2009 c 542 § 7.]

Finding—Intent—2011 1st sp.s. c 34: See note following RCW 28A.150.325.

Chapter 28A.290 RCW QUALITY EDUCATION COUNCIL

Sections

28A.290.010 Quality education council—Purpose—Membership and staffing—Reports.

28A.290.010 Quality education council—Purpose—Membership and staffing—Reports. (1) The quality education council is created to recommend and inform the ongoing implementation by the legislature of an evolving program of basic education and the financing necessary to support such program. The council shall develop strategic recommendations on the program of basic education for the common schools. The council shall take into consideration the capacity report produced under RCW 28A.300.172 and the availability of data and progress of implementing the data systems required under RCW 28A.655.210. Any recommendations shall be based on evidence that the programs effectively support student learning. The council shall update the statewide strategic recommendations every four years. The recommendations of the council are intended to:

(a) Inform future educational policy and funding decisions of the legislature and governor;

(b) Identify measurable goals and priorities for the educational system in Washington state for a ten-year time period, including the goals of basic education and ongoing strategies for coordinating statewide efforts to eliminate the achievement gap and reduce student dropout rates; and

(c) Enable the state of Washington to continue to implement an evolving program of basic education.

(2) The council may request updates and progress reports from the office of the superintendent of public instruction, the state board of education, the professional educator standards board, and the department of early learning on the work of the

agencies as well as educational working groups established by the legislature.

(3) The chair of the council shall be selected from the councilmembers. The council shall be composed of the following members:

(a) Four members of the house of representatives, with two members representing each of the major caucuses and appointed by the speaker of the house of representatives;

(b) Four members of the senate, with two members representing each of the major caucuses and appointed by the president of the senate;

(c) One representative each from the office of the governor, office of the superintendent of public instruction, state board of education, professional educator standards board, and department of early learning; and

(d) One nonlegislative representative from the educational opportunity gap oversight and accountability committee established under RCW 28A.300.136, to be selected by the members of the committee.

(4) The council shall meet no more than four days a year.

(5)(a) The council shall submit an initial report to the governor and the legislature by January 1, 2010, detailing its recommendations, including recommendations for resolving issues or decisions requiring legislative action during the 2010 legislative session, and recommendations for any funding necessary to continue development and implementation of chapter 548, Laws of 2009.

(b) The initial report shall, at a minimum, include:

(i) Consideration of how to establish a statewide beginning teacher mentoring and support system;

(ii) Recommendations for a program of early learning for at-risk children;

(iii) A recommended schedule for the concurrent phase-in of the changes to the instructional program of basic education and the implementation of the funding formulas and allocations to support the new instructional program of basic education as established under chapter 548, Laws of 2009. The phase-in schedule shall have full implementation completed by September 1, 2018; and

(iv) A recommended schedule for phased-in implementation of the new distribution formula for allocating state funds to school districts for the transportation of students to and from school, with phase-in beginning no later than September 1, 2013.

(6) The council shall submit a report to the legislature by January 1, 2012, detailing its recommendations for a comprehensive plan for a voluntary program of early learning. Before submitting the report, the council shall seek input from the early learning advisory council created in RCW 43.215.090.

(7) The council shall submit a report to the governor and the legislature by December 1, 2010, that includes:

(a) Recommendations for specific strategies, programs, and funding, including funding allocations through the funding distribution formula in RCW 28A.150.260, that are designed to close the achievement gap and increase the high school graduation rate in Washington public schools. The council shall consult with the educational opportunity gap oversight and accountability committee and the building bridges work group in developing its recommendations; and

(b) Recommendations for assuring adequate levels of state-funded classified staff to support essential school and district services.

(8) The council shall be staffed by the office of the superintendent of public instruction and the office of financial management. Additional staff support shall be provided by the state entities with representatives on the council. Senate committee services and the house of representatives office of program research may provide additional staff support.

(9) Legislative members of the council shall serve without additional compensation but may be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council may be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 21 § 54. Prior: 2010 c 236 § 15; 2010 c 234 § 4; 2009 c 548 § 114.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Intent—2010 c 234: See note following RCW 43.215.090.

Effective date—2010 c 236 § 6: "Section 6 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2010]." [2010 c 236 § 20.]

Technical working group—Supplemental funding options—2010 c 236; 2009 c 548: "(1) Beginning April 1, 2010, the office of financial management, with assistance and support from the office of the superintendent of public instruction, shall convene a technical working group to develop options for a new system of supplemental school funding through local school levies and local effort assistance.

(2) The working group shall consider the impact on overall school district revenues of the new basic education funding system established under chapter 548, Laws of 2009 and shall recommend a phase-in plan that ensures that no school district suffers a decrease in funding from one school year to the next due to implementation of the new system of supplemental funding.

(3) The working group shall also:

(a) Examine local school district capacity to address facility needs associated with phasing-in full-day kindergarten across the state and reducing class size in kindergarten through third grade; and

(b) Provide the quality education council with analysis on the potential use of local funds that may become available for redeployment and redirection as a result of increased state funding allocations for pupil transportation and maintenance, supplies, and operating costs.

(4) The working group shall be composed of representatives from the department of revenue, the legislative evaluation and accountability program committee, school district and educational service district financial managers, and representatives of the Washington association of school business officers, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with expertise in education finance. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders.

(5) The local funding working group shall be monitored and overseen by the legislature and by the quality education council created in RCW 28A.290.010. The working group shall report to the legislature June 30, 2011." [2010 c 236 § 6; 2009 c 548 § 302.]

Intent—2009 c 548: See note following RCW 28A.150.198.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

Chapter 28A.300 RCW

SUPERINTENDENT OF PUBLIC INSTRUCTION

Sections

28A.300.039 Condensed compliance reports—Second-class districts.
28A.300.040 Powers and duties.

28A.300.040 School district fiscal notes.
28A.300.046 "Student absence from school"—Rules—Collection of attendance and discipline data.
28A.300.105 Office of Native education—Duties—Report.
28A.300.106 Native education public-private partnership account.
28A.300.136 Educational opportunity gap oversight and accountability committee—Policy and strategy recommendations.
28A.300.147 Students required to register as sex or kidnapping offenders—Sample policy.
28A.300.285 School bullying and harassment—Work group.
28A.300.288 Youth suicide prevention—Pilot projects to implement activities.
28A.300.380 Career and technical student organizations—Support services.
28A.300.450 Financial education public-private partnership—Established.
28A.300.462 Financial education public-private partnership—Jumpstart coalition national standards—Financial education learning standards—Technical assistance and grants for demonstration projects—Report.
28A.300.545 Condensed compliance report form—Audit of districts submitting condensed compliance report forms.
28A.300.550 Innovation schools—Identification—Web site—Publicity.
28A.300.555 Finding—Grants to improve readiness to learn.
28A.300.802 Advisory groups—Travel—Compensation.

28A.300.039 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 19.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

28A.300.040 Powers and duties. In addition to any other powers and duties as provided by law, the powers and duties of the superintendent of public instruction shall be:

(1) To have supervision over all matters pertaining to the public schools of the state;

(2) To report to the governor and the legislature such information and data as may be required for the management and improvement of the schools;

(3) To prepare and have printed such forms, registers, courses of study, rules for the government of the common schools, and such other material and books as may be necessary for the discharge of the duties of teachers and officials charged with the administration of the laws relating to the common schools, and to distribute the same to educational service district superintendents;

(4) To travel, without neglecting his or her other official duties as superintendent of public instruction, for the purpose of attending educational meetings or conventions, of visiting schools, and of consulting educational service district superintendents or other school officials;

(5) To prepare and from time to time to revise a manual of the Washington state common school code, copies of which shall be made available online and which shall be sold at approximate actual cost of publication and distribution per volume to public and nonpublic agencies or individuals, said manual to contain Titles 28A and 28C RCW, rules related to the common schools, and such other matter as the state superintendent or the state board of education shall determine;

(6) To file all papers, reports and public documents transmitted to the superintendent by the school officials of the several counties or districts of the state, each year separately. Copies of all papers filed in the superintendent's office, and the superintendent's official acts, may, or upon request, shall be certified by the superintendent and attested

by the superintendent's official seal, and when so certified shall be evidence of the papers or acts so certified to;

(7) To require annually, on or before the 15th day of August, of the president, manager, or principal of every educational institution in this state, a report as required by the superintendent of public instruction; and it is the duty of every president, manager, or principal, to complete and return such forms within such time as the superintendent of public instruction shall direct;

(8) To keep in the superintendent's office a record of all teachers receiving certificates to teach in the common schools of this state;

(9) To issue certificates as provided by law;

(10) To keep in the superintendent's office at the capital of the state, all books and papers pertaining to the business of the superintendent's office, and to keep and preserve in the superintendent's office a complete record of statistics, as well as a record of the meetings of the state board of education;

(11) With the assistance of the office of the attorney general, to decide all points of law which may be submitted to the superintendent in writing by any educational service district superintendent, or that may be submitted to the superintendent by any other person, upon appeal from the decision of any educational service district superintendent; and the superintendent shall publish his or her rulings and decisions from time to time for the information of school officials and teachers; and the superintendent's decision shall be final unless set aside by a court of competent jurisdiction;

(12) To administer oaths and affirmations in the discharge of the superintendent's official duties;

(13) To deliver to his or her successor, at the expiration of the superintendent's term of office, all records, books, maps, documents and papers of whatever kind belonging to the superintendent's office or which may have been received by the superintendent's for the use of the superintendent's office;

(14) To administer family services and programs to promote the state's policy as provided in RCW 74.14A.025;

(15) To promote the adoption of school-based curricula and policies that provide quality, daily physical education for all students, and to encourage policies that provide all students with opportunities for physical activity outside of formal physical education classes;

(16) To perform such other duties as may be required by law. [2011 1st sp.s. c 43 § 302; 2009 c 556 § 10; 2006 c 263 § 104; 2005 c 360 § 6; 1999 c 348 § 6; 1992 c 198 § 6; 1991 c 116 § 2; 1990 c 33 § 251; 1982 c 160 § 2; 1981 c 249 § 1; 1977 c 75 § 17; 1975 1st ex.s. c 275 § 47; 1971 ex.s. c 100 § 1; 1969 ex.s. c 176 § 102; 1969 ex.s. c 223 § 28A.03.030. Prior: 1967 c 158 § 4; 1909 c 97 p 231 § 3; RRS § 4523; prior: 1907 c 240 § 1; 1903 c 104 § 9; 1901 c 177 § 5; 1901 c 41 § 1; 1899 c 142 § 4; 1897 c 118 § 22; 1891 c 127 §§ 1, 2; 1890 pp 348-351 §§ 3, 4; Code 1881 §§ 3155-3160; 1873 p 419 §§ 2-6; 1861 p 55 §§ 2, 3, 4. Formerly RCW 28A.03.030, 28.03.030, 43.11.030.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Findings—Intent—2005 c 360: See note following RCW 36.70A.070.

Intent—1999 c 348: See note following RCW 28A.205.010.

Additional notes found at www.leg.wa.gov

28A.300.0401 School district fiscal notes. (1) The office of the superintendent of public instruction shall, where it is practicable to do so within available resources, prepare school district fiscal notes on proposed legislation that increases or decreases, or tends to increase or decrease, school district revenues or expenditures in a manner that uniquely affects school districts. Proposed legislation that uniquely affects school districts includes, but is not limited to, legislation that affects school districts' responsibilities as providers of educational services under this title, as employers under chapter 41.59 RCW, or as excess levy taxing authorities under RCW 84.52.053 and 84.52.0531, but excludes proposed legislation that affects school districts only in the same manner that it affects other units of local government.

(2) Where practicable, the school district fiscal note shall show the fiscal impact of the proposed legislation on each school district. Where it is not practicable to do so, the school district fiscal note shall show the effect of the legislation on a range of representative school districts. The fiscal note must set forth any assumptions that were used in selecting the representative districts, along with any other assumptions made about the fiscal impact.

(3) School district fiscal notes prepared under this section are subject to coordination by the office of financial management under RCW 43.88A.020 and are otherwise subject to the requirements and procedures of chapter 43.88A RCW. [2011 c 140 § 3.]

28A.300.046 "Student absence from school"—Rules—Collection of attendance and discipline data.

(1)(a) The superintendent of public instruction shall adopt rules establishing a standard definition of student absence from school. In adopting the definition, the superintendent shall review current practices in Washington school districts, definitions used in other states, and any national standards or definitions used by the national center for education statistics or other national groups. The superintendent shall also consult with the building bridges work group established under RCW 28A.175.075.

(b) Using the definition of student absence adopted under this section, the superintendent shall establish an indicator for measuring student attendance in high schools for purposes of the PASS program under RCW 28A.175.130.

(2)(a) The K-12 data governance group under RCW 28A.300.507 shall establish the parameters and an implementation schedule for statewide collection through the comprehensive education and data research system of: (i) Student attendance data using the definitions of student absence adopted under this section; and (ii) student discipline data with a focus on suspensions and expulsions from school.

(b) At a minimum, school districts must collect and submit student attendance data and student discipline data for high school students through the comprehensive education and data research system for purposes of the PASS program under RCW 28A.175.130 beginning in the 2012-13 school year. [2011 c 288 § 10.]

28A.300.105 Office of Native education—Duties—

Report. (1) To the extent funds are available, an Indian education division, to be known as the office of Native education, is created within the office of the superintendent of public instruction. The superintendent shall appoint an individual to be responsible for the office of Native education.

(2) To the extent state funds are available, with additional support of federal and local funds where authorized by law, the office of Native education shall:

(a) Provide assistance to school districts in meeting the educational needs of American Indian and Alaska Native students;

(b) Facilitate the development and implementation of curricula and instructional materials in native languages, culture and history, and the concept of tribal sovereignty pursuant to RCW 28A.320.170;

(c) Provide assistance to districts in the acquisition of funding to develop curricula and instructional materials in conjunction with native language practitioners and tribal elders;

(d) Coordinate technical assistance for public schools that serve American Indian and Alaska Native students;

(e) Seek funds to develop, in conjunction with the Washington state native American education advisory committee, and implement the following support services for the purposes of both increasing the number of American Indian and Alaska Native teachers and principals and providing continued professional development for educational assistants, teachers, and principals serving American Indian and Alaska Native students:

(i) Recruitment and retention;

(ii) Academic transition programs;

(iii) Academic financial support;

(iv) Teacher preparation;

(v) Teacher induction; and

(vi) Professional development;

(f) Facilitate the inclusion of native language programs in school districts' curricula;

(g) Work with all relevant agencies and committees to highlight the need for accurate, useful data that is appropriately disaggregated to provide a more accurate picture regarding American Indian and Alaska Native students; and

(h) Report to the governor, the legislature, and the governor's office of Indian affairs on an annual basis, beginning in December 2012, regarding the state of Indian education and the implementation of all state laws regarding Indian education, specifically noting system successes and accomplishments, deficiencies, and needs. [2011 c 270 § 2.]

Findings—2011 c 270: "The legislature finds:

(1) Leadership, technical assistance, and advocacy is important to promoting the academic success of all students, particularly including American Indian and Alaska Native students;

(2) American Indian and Alaska Native students make up two and one-half percent of the total student population in the state and twenty-five percent or more of the student population in fifty-seven schools across the state;

(3) The annual dropout rate for American Indian and Alaska Native students has hovered around ten or eleven percent over the past three school years and, while the on-time graduation rate for these students has improved between the 2006-07 and 2008-09 school years, it is still only fifty-two and seven-tenths percent; and

(4) Despite the passage of House Bill No. 1495 in 2005, with its goal of educating citizens of the state about tribal history, culture, treaty rights, contemporary tribal and state government institutions and relations, and the con-

tribution of American Indians and Alaska Natives to the state, that goal has yet to be achieved in many schools." [2011 c 270 § 1.]

28A.300.106 Native education public-private partnership account. The Native education public-private partnership account is created in the custody of the state treasurer. The purpose of the account is to support the activities of the office of Native education within the office of the superintendent of public instruction under RCW 28A.300.105. Receipts from any appropriations made by the legislature for the purposes of RCW 28A.300.105, federal funds, gifts or grants from the private sector or foundations, and other sources must be deposited into the account. Only the superintendent of public instruction or the superintendent's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2011 c 270 § 3.]

Findings—2011 c 270: See note following RCW 28A.300.105.

28A.300.136 Educational opportunity gap oversight and accountability committee—Policy and strategy recommendations.

(1) An educational opportunity gap oversight and accountability committee is created to synthesize the findings and recommendations from the 2008 achievement gap studies into an implementation plan, and to recommend policies and strategies to the superintendent of public instruction, the professional educator standards board, and the state board of education to close the achievement gap.

(2) The committee shall recommend specific policies and strategies in at least the following areas:

(a) Supporting and facilitating parent and community involvement and outreach;

(b) Enhancing the cultural competency of current and future educators and the cultural relevance of curriculum and instruction;

(c) Expanding pathways and strategies to prepare and recruit diverse teachers and administrators;

(d) Recommending current programs and resources that should be redirected to narrow the gap;

(e) Identifying data elements and systems needed to monitor progress in closing the gap;

(f) Making closing the achievement gap part of the school and school district improvement process; and

(g) Exploring innovative school models that have shown success in closing the achievement gap.

(3) Taking a multidisciplinary approach, the committee may seek input and advice from other state and local agencies and organizations with expertise in health, social services, gang and violence prevention, substance abuse prevention, and other issues that disproportionately affect student achievement and student success.

(4) The educational opportunity gap oversight and accountability committee shall be composed of the following members:

(a) The chairs and ranking minority members of the house and senate education committees, or their designees;

(b) One additional member of the house of representatives appointed by the speaker of the house and one additional member of the senate appointed by the president of the senate;

(c) A representative of the office of the education ombudsman;

(d) A representative of the center for the improvement of student learning in the office of the superintendent of public instruction;

(e) A representative of federally recognized Indian tribes whose traditional lands and territories lie within the borders of Washington state, designated by the federally recognized tribes; and

(f) Four members appointed by the governor in consultation with the state ethnic commissions, who represent the following populations: African-Americans, Hispanic Americans, Asian Americans, and Pacific Islander Americans.

(5) The governor and the tribes are encouraged to designate members who have experience working in and with schools.

(6) The committee may convene ad hoc working groups to obtain additional input and participation from community members. Members of ad hoc working groups shall serve without compensation and shall not be reimbursed for travel or other expenses.

(7) The chair or cochairs of the committee shall be selected by the members of the committee. Staff support for the committee shall be provided by the center for the improvement of student learning. Members of the committee shall serve without compensation but must be reimbursed as provided in RCW 43.03.050 and 43.03.060. Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW 44.04.120.

(8) The superintendent of public instruction, the state board of education, the professional educator standards board, and the quality education council shall work collaboratively with the educational opportunity gap oversight and accountability committee to close the achievement gap. [2011 1st sp.s. c 21 § 33; 2010 c 235 § 901; 2009 c 468 § 2.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Finding—2010 c 235: See note following RCW 28A.405.245.

Findings—Intent—2009 c 468: "(1) The legislature finds compelling evidence from five commissioned studies that additional progress must be made to address the achievement gap. Many students are in demographic groups that are overrepresented in measures such as school disciplinary sanctions; failure to meet state academic standards; failure to graduate; enrollment in special education and underperforming schools; enrollment in advanced placement courses, honors programs, and college preparatory classes; and enrollment in and completion of college. The studies contain specific recommendations that are data-driven and drawn from education research, as well as the personal, professional, and cultural experience of those who contributed to the studies. The legislature finds there is no better opportunity to make a strong commitment to closing the achievement gap and to affirm the state's constitutional obligation to provide opportunities to learn for all students without distinction or preference on account of race, ethnicity, socioeconomic status, or gender.

(2) The legislature further finds that access to comprehensive and consistent data that is disaggregated in the smallest units allowable by law is important in closing the achievement gap. Policymakers and educators need as much information as possible not only about students' academic progress, but also about other factors across multiple disciplines that affect student performance.

(3) A consistent and powerful theme throughout the achievement gap studies was the need for cultural competency in instruction, curriculum, assessment, and professional development. Cultural competency forms a foundation for efforts to address the achievement gap, and more work is needed to embed it into the public school system.

(4) Therefore, following the priority recommendations from the achievement gap studies, the legislature intends to:

(a) Provide resources to support parent and community involvement and outreach efforts by public schools, including such items as additional notices and communication to parents, translations, translators, parent and community meetings, and school events within the community. The legislature encourages school districts to consult with the office of the education ombudsman in developing plans for parent and community involvement and outreach;

(b) Require that teachers demonstrate cultural competency in the classroom and with students at each level of state teacher certification, and provide additional opportunities for professional development in cultural competency for current teachers;

(c) Create local alternative routes to teacher certification for paraeducators and individuals in the communities surrounding schools and school districts that are struggling to address the achievement gap;

(d) Reexamine the study recommendations regarding data and accountability and identify ways for the education data system to address these needs; and

(e) Sustain efforts to close the achievement gap over the long term by creating a high profile achievement gap oversight and accountability committee that will provide ongoing advice to education agencies and report annually to the legislature and the governor." [2009 c 468 § 1.]

28A.300.147 Students required to register as sex or kidnapping offenders—Sample policy. The superintendent of public instruction shall publish on its web site, with a link to the safety center web page, a revised and updated sample policy for schools to follow regarding students required to register as sex or kidnapping offenders. [2011 c 338 § 6.]

28A.300.2851 School bullying and harassment—Work group. (1) The office of the superintendent of public instruction and the office of the education ombudsman shall convene a work group on school bullying and harassment prevention to develop, recommend, and implement strategies to improve school climate and create respectful learning environments in all public schools in Washington. The superintendent of public instruction or a designee shall serve as the chair of the work group.

(2) The work group shall:

(a) Consider whether additional disaggregated data should be collected regarding incidents of bullying and harassment or disciplinary actions and make recommendations to the office of the superintendent of public instruction for collection of such data;

(b) Examine possible procedures for anonymous reporting of incidents of bullying and harassment;

(c) Identify curriculum and best practices for school districts to improve school climate, create respectful learning environments, and train staff and students in de-escalation and intervention techniques;

(d) Identify curriculum and best practices for incorporating instruction about mental health, youth suicide prevention, and prevention of bullying and harassment;

(e) Recommend best practices for informing parents about the harassment, intimidation, and bullying prevention policy and procedure under RCW 28A.300.285 and involving parents in improving school climate;

(f) Recommend training for district personnel who are designated as the primary contact regarding the policy and procedure and for school resource officers and other school security personnel;

(g) Recommend educator preparation and certification requirements in harassment, intimidation, and bullying prevention and de-escalation and intervention techniques for

teachers, educational staff associates, and school administrators;

(h) Examine and recommend policies for discipline of students and staff who harass, intimidate, or bully; and

(i) In collaboration with the state board for community and technical colleges, examine and recommend policies to protect K-12 students attending community and technical colleges from harassment, intimidation, and bullying.

(3) The work group must include representatives from the state board of education, the Washington state parent teacher association, the Washington state association of school psychologists, school directors, school administrators, principals, teachers, school counselors, classified school staff, youth, community organizations, and parents.

(4) The work group shall submit a biennial progress and status report to the governor and the education committees of the legislature, beginning December 1, 2011, with additional reports by December 1, 2013, and December 1, 2015.

(5) The work group is terminated effective January 1, 2016. [2011 c 185 § 2.]

Finding—2011 c 185: "The legislature finds that having updated school district policies and procedures is a step in the right direction for preventing bullying, intimidation, and harassment, but more steps are needed. A work group could help to maintain focus and attention on antibullying and antiharassment, as well as monitor progress. In addition, students' knowledge and understanding of two key correlates of bullying and harassment, depression and youth suicide, could be enhanced through instruction and assessments that address mental health and suicide prevention." [2011 c 185 § 1.]

28A.300.288 Youth suicide prevention—Pilot projects to implement activities. The office of the superintendent of public instruction shall work with state agency and community partners to develop pilot projects to assist schools in implementing youth suicide prevention activities. [2011 c 185 § 3.]

Finding—2011 c 185: See note following RCW 28A.300.2851.

28A.300.380 Career and technical student organizations—Support services. (1) To the extent funds are available, the superintendent of public instruction shall maintain support for statewide coordination for career and technical student organizations by providing program staff support that is available to assist in meeting the needs of career and technical student organizations and their members and students. The superintendent may provide additional support to the organizations through contracting with independent coordinators.

(2) Career and technical student organizations eligible for technical assistance and other support services under this section are organizations recognized as career and technical student organizations by:

(a) The United States department of education; or

(b) The superintendent of public instruction, if such recognition is recommended by the Washington association for career and technical education.

(3) Career and technical student organizations eligible for technical assistance and other support services under this section include, but are not limited to: The national FFA organization; family, career, and community leaders of America; skillsUSA; distributive education clubs of America; future business leaders of America; and the technology

student association. [2011 1st sp.s. c 27 § 4; 2010 1st sp.s. c 37 § 913; 2000 c 84 § 2.]

Effective date—2011 1st sp.s. c 27 §§ 4 and 5: "Sections 4 and 5 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 7, 2011]." [2011 1st sp.s. c 27 § 9.]

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Findings—2000 c 84: "(1) The legislature finds that career and technical student organizations:

(a) Prepare students for career experiences beyond high school;

(b) Help students develop personal, leadership, technical, and occupational skills;

(c) Are an integral component of vocational technical instruction programs; and

(d) Directly help students achieve state learning goals, especially goals three and four with respect to critical thinking, problem solving, and decision-making skills.

(2) The legislature finds that career and technical student organizations are best situated to fulfill their important purpose if they are in existence pursuant to statute and receive ongoing assistance and support from the office of superintendent of public instruction." [2000 c 84 § 1.]

28A.300.450 Financial education public-private partnership—Established. (1) A financial education public-private partnership is established, composed of the following members:

(a) Four members of the legislature, with one member from each caucus of the house of representatives appointed for a two-year term of service by the speaker of the house of representatives, and one member from each caucus of the senate appointed for a two-year term of service by the president of the senate;

(b) Four representatives from the private for-profit and nonprofit financial services sector, including at least one representative from the jumpstart coalition, to be appointed for a staggered two-year term of service by the governor;

(c) Four teachers to be appointed for a staggered two-year term of service by the superintendent of public instruction, with one each representing the elementary, middle, secondary, and postsecondary education sectors;

(d) A representative from the department of financial institutions to be appointed for a two-year term of service by the director;

(e) Two representatives from the office of the superintendent of public instruction, with one involved in curriculum development and one involved in teacher professional development, to be appointed for a staggered two-year term of service by the superintendent.

(2) The chair of the partnership shall be selected by the members of the partnership from among the legislative members.

(3) One-half of the members appointed under subsection (1)(b), (c), and (e) of this section shall be appointed for a one-year term beginning August 1, 2011, and a two-year term thereafter.

(4) To the extent funds are appropriated or are available for this purpose, the partnership may hire a staff person who shall reside in the office of the superintendent of public instruction for administrative purposes. Additional technical and logistical support may be provided by the office of the superintendent of public instruction, the department of financial institutions, the organizations composing the partnership,

and other participants in the financial education public-private partnership.

(5) The members of the partnership shall be appointed by August 1, 2011.

(6) Legislative members of the partnership shall receive per diem and travel under RCW 44.04.120.

(7) Travel and other expenses of members of the partnership shall be provided by the agency, association, or organization that member represents.

(8) This section shall be implemented to the extent funds are available. [2011 c 262 § 1; 2009 c 443 § 1; 2004 c 247 § 2.]

Findings—Intent—2004 c 247: "The legislature recognizes that the average high school student lacks a basic knowledge of personal finance. In addition, the legislature recognizes the damaging effects of not properly preparing youth for the financial challenges of modern life, including bankruptcy, poor retirement planning, unmanageable debt, and a lower standard of living for Washington families.

The legislature finds that the purpose of the state's system of public education is to help students acquire the skills and knowledge they will need to be productive and responsible 21st century citizens. The legislature further finds that responsible citizenship includes an ability to make wise financial decisions. The legislature further finds that financial literacy could easily be included in lessons, courses, and projects that demonstrate each student's understanding of the state's four learning goals, including goal four: Understanding the importance of work and how performance, effort, and decisions directly affect future opportunities.

The legislature intends to assist school districts in their efforts to ensure that students are financially literate through identifying critical financial literacy skills and knowledge, providing information on instructional materials, and creating a public-private partnership to help provide instructional tools and professional development to school districts that wish to increase the financial literacy of their students." [2004 c 247 § 1.]

28A.300.462 Financial education public-private partnership—Jumpstart coalition national standards—Financial education learning standards—Technical assistance and grants for demonstration projects—Report.

(1) School districts are encouraged to voluntarily adopt the jumpstart coalition national standards in K-12 personal finance education and provide students with an opportunity to master the standards.

(2) Subject to funds appropriated specifically for this purpose, the office of the superintendent of public instruction and the financial education public-private partnership shall provide technical assistance and grants to support demonstration projects for district-wide adoption and implementation of the financial education learning standards under this section.

(3) School districts may apply on a competitive basis to participate as a demonstration project. The office and the partnership shall select up to four school districts as demonstration projects, with two districts located in eastern Washington and two districts located in western Washington, if possible.

(4) Selected districts must:

(a) Adopt the jumpstart coalition national standards in K-12 personal finance education as the essential academic learning requirements for financial education and provide students with an opportunity to master the standards;

(b) Make a commitment to integrate financial education into instruction at all grade levels and in all schools in the district;

(c) Establish local partnerships within the community to promote financial education in the schools; and

(d) Conduct pre and posttesting of students' financial literacy.

(5) The office of the superintendent of public instruction, with the advice of the financial education public-private partnership, shall provide assistance to the demonstration projects regarding curriculum, professional development, and innovative instructional programs to implement the financial education standards.

(6) The selected districts must report findings and results of the demonstration project to the office of the superintendent of public instruction and appropriate committees of the legislature annually. [2011 c 262 § 2; 2009 c 443 § 3.]

28A.300.545 Condensed compliance report form—Audit of districts submitting condensed compliance report forms.

(1) The superintendent of public instruction shall develop a condensed compliance report form for second-class districts by August 1, 2011. The report form shall allow districts the option of indicating one of the following for each funded program:

(a) The district has complied or received a state board of education-approved waiver;

(b) The district has not complied, accompanied by an explanation or the steps taken to comply; or

(c) The district has received a grant for less than half of a full-time equivalent instructional staff.

(2) The office of the superintendent of public instruction may conduct random audits of second-class districts that submit a condensed compliance report under RCW 28A.330.250. The purpose of the audit is to determine whether documentation exists to support a school district superintendent's condensed compliance report. [2011 c 45 § 2.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

28A.300.550 Innovation schools—Identification—Web site—Publicity.

(1) The legislature finds that innovation schools accomplish the following objectives:

(a) Provide students and parents with a diverse array of educational options;

(b) Promote active and meaningful parent and community involvement and partnership with local schools;

(c) Serve as laboratories for educational experimentation and innovation;

(d) Respond and adapt to different styles, approaches, and objectives of learning;

(e) Hold students and educators to high expectations and standards; and

(f) Encourage and facilitate bold, creative, and innovative educational ideas.

(2) The office of the superintendent of public instruction shall develop basic criteria and a streamlined review process for identifying Washington innovation schools. Any public school, including those with institution of higher education partners, may be nominated by a community, organization, school district, institution of higher education, or through self-nomination to be designated as a Washington innovation school. If the office of the superintendent of public instruction

tion finds that the school meets the criteria, the school shall receive a designation as a Washington innovation school. Within available funds, the office shall develop a logo, certificate, and other recognition strategies to encourage and highlight the accomplishments of innovation schools.

(3) The office of the superintendent of public instruction shall:

(a) Create a page on the office web site to highlight examples of Washington innovation schools, including those with institution of higher education partners, that includes links to research literature and national best practices, as well as summary information and links to the web sites of Washington innovation schools. The office is encouraged to offer an educational administrator intern the opportunity to create the web page as a project toward completion of his or her administrator certificate; and

(b) Publicize the Washington innovation school designation and encourage schools, communities, institutions of higher education, and school districts to access the web site and create additional models of innovation. [2011 c 202 § 2.]

Finding—Intent—2011 c 202: "(1) The legislature finds that Washington has a long history of providing legal, financial, and political support for a wide range of innovative programs and initiatives and that these can and do operate successfully in public schools through the currently authorized governance structure of locally elected boards of directors of school districts.

(2) Examples of innovation schools can be found all across the state including, but not limited to:

(a) The Vancouver school of arts and academics that offers students beginning in sixth grade the opportunity to immerse themselves in the full range of the arts, including dance, music, theater, literary arts, visual arts, and moving image arts, as well as all levels of core academic courses;

(b) Thornton Creek elementary school in Seattle, an award-winning parent-initiated learning option based on the expeditionary learning outward bound model;

(c) The technology access foundation academy, a unique public-private partnership with the Federal Way school district that offers a rigorous and relevant curriculum through project-based learning, full integration of technology, and a small learning community intended to provide middle and high school students the opportunity for success in school and college;

(d) Talbot Hill elementary school in Renton, where students participate in a microcommunity program that includes selecting a government, conducting business and encouraging entrepreneurialism, and providing community services such as banking, newspaper, post office, and courts;

(e) The Tacoma school of the arts, where sophomores through seniors form a cohesive, full-time learning community to study the full range of humanities, mathematics, science, and language as well as build a broad foundation in all forms of the arts, culminating with an in-depth senior arts project that showcases each student's talent and interest;

(f) The SPRINT program at Shaw middle school in Spokane, an alternative learning community for students in seventh and eighth grade proposed and created by a group of parents who wish to be very actively involved in their students' education;

(g) Puesta del sol elementary school in Bellevue, offering a diverse multicultural program and Spanish language immersion beginning in kindergarten;

(h) The Washington national guard youth challenge program operated in collaboration with the Bremerton school district that offers high-risk youth a rigorous and structured residential program that builds students' academic, social, and emotional skills, and physical fitness while providing up to one year of high school credits toward graduation;

(i) The Lincoln center program at Lincoln high school in Tacoma, an extended day program that has virtually eliminated the academic achievement gap and significantly boosted attendance and test scores for racially diverse, low-income, and highly mobile students;

(j) Delta high school, a science, technology, engineering, and math-focused school option for students in the Tri-Cities operating in cooperation with three school districts, the regional skill center, local colleges and universities, and the business community; and

(k) Aviation high school in the Highline school district, offering a project-based curriculum and learning environment centered on an aviation and aeronautics theme with strong business and community support.

(3) Therefore, the legislature intends to encourage additional innovation schools by disseminating information about current models and recognizing the effort and commitment that goes into their creation and operation." [2011 c 202 § 1.]

28A.300.555 Finding—Grants to improve readiness to learn. (1) The legislature finds that helping children to arrive at school ready to learn is an important part of improving student learning.

(2) To the extent funds are appropriated, the superintendent of public instruction shall award grants to community-based consortiums that submit comprehensive plans that include strategies to improve readiness to learn. [2011 1st sp.s. c 32 § 11; 1993 c 336 § 901. Formerly RCW 70.190.040.]

Transition plan—Report to the legislature—2011 1st sp.s. c 32: See note following RCW 70.305.005.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.150.210.

28A.300.802 Advisory groups—Travel—Compensation. In addition to any board, commission, council, committee, or other similar group established by statute or executive order, the superintendent of public instruction may appoint advisory groups on subject matters within the superintendent's responsibilities or as may be required by any federal legislation as a condition to the receipt of federal funds by the federal department. The advisory groups shall be constituted as required by federal law or as the superintendent may determine.

Members of advisory groups under the authority of the superintendent may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

Except as provided in this section, members of advisory groups under the authority of the superintendent are volunteering their services and are not eligible for compensation. A person is eligible to receive compensation in an amount not to exceed one hundred dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group if the person (1) occupies a position, normally regarded as full-time in nature, as a certificated employee of a local school district; (2) is participating as part of their employment with the local school district; and (3) the meeting or duties are performed outside the period in which school days as defined by *RCW 28A.150.030 are conducted. The superintendent may reimburse local school districts for substitute certificated employees to enable members to meet or perform duties on school days. A person is eligible to receive compensation from federal funds in an amount to be determined by personal service contract for groups required by federal law. [2011 1st sp.s. c 21 § 53.]

***Reviser's note:** RCW 28A.150.030 expired September 1, 2011. See RCW 28A.150.203.

Chapter 28A.305 RCW STATE BOARD OF EDUCATION

Sections

28A.305.045 Condensed compliance reports—Second-class districts.
28A.305.130 Powers and duties—Purpose.

28A.305.140 Waiver from provisions of RCW 28A.150.200 through 28A.150.220 authorized. (*Effective until June 30, 2019.*)

28A.305.045 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 20.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

28A.305.130 Powers and duties—Purpose. The purpose of the state board of education is to provide advocacy and strategic oversight of public education; implement a standards-based accountability framework that creates a unified system of increasing levels of support for schools in order to improve student academic achievement; provide leadership in the creation of a system that personalizes education for each student and respects diverse cultures, abilities, and learning styles; and promote achievement of the goals of RCW 28A.150.210. In addition to any other powers and duties as provided by law, the state board of education shall:

(1) Hold regularly scheduled meetings at such time and place within the state as the board shall determine and may hold such special meetings as may be deemed necessary for the transaction of public business;

(2) Form committees as necessary to effectively and efficiently conduct the work of the board;

(3) Seek advice from the public and interested parties regarding the work of the board;

(4) For purposes of statewide accountability:

(a) Adopt and revise performance improvement goals in reading, writing, science, and mathematics, by subject and grade level, once assessments in these subjects are required statewide; academic and technical skills, as appropriate, in secondary career and technical education programs; and student attendance, as the board deems appropriate to improve student learning. The goals shall be consistent with student privacy protection provisions of RCW 28A.655.090(7) and shall not conflict with requirements contained in Title I of the federal elementary and secondary education act of 1965, or the requirements of the Carl D. Perkins vocational education act of 1998, each as amended. The goals may be established for all students, economically disadvantaged students, limited English proficient students, students with disabilities, and students from disproportionately academically under-achieving racial and ethnic backgrounds. The board may establish school and school district goals addressing high school graduation rates and dropout reduction goals for students in grades seven through twelve. The board shall adopt the goals by rule. However, before each goal is implemented, the board shall present the goal to the education committees of the house of representatives and the senate for the committees' review and comment in a time frame that will permit the legislature to take statutory action on the goal if such action is deemed warranted by the legislature;

(b) Identify the scores students must achieve in order to meet the standard on the statewide student assessment and, for high school students, to obtain a certificate of academic achievement. The board shall also determine student scores that identify levels of student performance below and beyond

the standard. The board shall consider the incorporation of the standard error of measurement into the decision regarding the award of the certificates. The board shall set such performance standards and levels in consultation with the superintendent of public instruction and after consideration of any recommendations that may be developed by any advisory committees that may be established for this purpose. The legislature shall be advised of the initial performance standards for the high school statewide student assessment. Any changes recommended by the board in the performance standards for the high school assessment shall be presented to the education committees of the house of representatives and the senate by November 30th of the school year in which the changes will take place to permit the legislature to take statutory action before the changes are implemented if such action is deemed warranted by the legislature. The legislature shall be advised of the initial performance standards and any changes made to the elementary level performance standards and the middle school level performance standards. The board must provide an explanation of and rationale for all initial performance standards and any changes, for all grade levels of the statewide student assessment. If the board changes the performance standards for any grade level or subject, the superintendent of public instruction must recalculate the results from the previous ten years of administering that assessment regarding students below, meeting, and beyond the state standard, to the extent that this data is available, and post a comparison of the original and recalculated results on the superintendent's web site;

(c) Annually review the assessment reporting system to ensure fairness, accuracy, timeliness, and equity of opportunity, especially with regard to schools with special circumstances and unique populations of students, and a recommendation to the superintendent of public instruction of any improvements needed to the system; and

(d) Include in the biennial report required under RCW 28A.305.035, information on the progress that has been made in achieving goals adopted by the board;

(5) Accredite, subject to such accreditation standards and procedures as may be established by the state board of education, all private schools that apply for accreditation, and approve, subject to the provisions of RCW 28A.195.010, private schools carrying out a program for any or all of the grades kindergarten through twelve. However, no private school may be approved that operates a kindergarten program only and no private school shall be placed upon the list of accredited schools so long as secret societies are knowingly allowed to exist among its students by school officials;

(6) Articulate with the institutions of higher education, workforce representatives, and early learning policymakers and providers to coordinate and unify the work of the public school system;

(7) Hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes. Any other personnel of the board shall be appointed as provided by RCW 28A.300.020. The board may delegate to the executive director by resolution such duties as deemed necessary to efficiently carry on the business of the board including, but not limited to, the authority to employ necessary personnel and the authority to enter into, amend, and terminate contracts on

behalf of the board. The executive director, administrative assistant, and all but one of the other personnel of the board are exempt from civil service, together with other staff as now or hereafter designated as exempt in accordance with chapter 41.06 RCW; and

(8) Adopt a seal that shall be kept in the office of the superintendent of public instruction. [2011 1st sp.s. c 6 § 1; 2009 c 548 § 502; 2008 c 27 § 1; 2006 c 263 § 102; 2005 c 497 § 104; 2002 c 205 § 3; 1997 c 13 § 5; 1996 c 83 § 1; 1995 c 369 § 9; 1991 c 116 § 11; 1990 c 33 § 266. Prior: 1987 c 464 § 1; 1987 c 39 § 1; prior: 1986 c 266 § 86; 1986 c 149 § 3; 1984 c 40 § 2; 1979 ex.s. c 173 § 1; 1975-'76 2nd ex.s. c 92 § 1; 1975 1st ex.s. c 275 § 50; 1974 ex.s. c 92 § 1; 1971 ex.s. c 215 § 1; 1971 c 48 § 2; 1969 ex.s. c 223 § 28A.04.120; prior: 1963 c 32 § 1; 1961 c 47 § 1; prior: (i) 1933 c 80 § 1; 1915 c 161 § 1; 1909 c 97 p 236 § 5; 1907 c 240 § 3; 1903 c 104 § 12; 1897 c 118 § 27; 1895 c 150 § 1; 1890 p 352 § 8; Code 1881 § 3165; RRS § 4529. (ii) 1919 c 89 § 3; RRS § 4684. (iii) 1909 c 97 p 238 § 6; 1897 c 118 § 29; RRS § 4530. Formerly RCW 28A.04.120, 28.04.120, 28.58.280, 28.58.281, 28.58.282, 43.63.140.]

Effective date—2011 1st sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 31, 2011]." [2011 1st sp.s. c 6 § 2.]

Intent—Finding—2009 c 548: "(1)(a) The legislature intends to develop a system in which the state and school districts share accountability for achieving state educational standards and supporting continuous school improvement. The legislature recognizes that comprehensive education finance reform and the increased investment of public resources necessary to implement that reform must be accompanied by a new mechanism for clearly defining the relationships and expectations for the state, school districts, and schools. It is the legislature's intent that this be accomplished through the development of a proactive, collaborative accountability system that focuses on a school improvement system that engages and serves the local school board, parents, students, staff in the schools and districts, and the community. The improvement system shall be based on progressive levels of support, with a goal of continuous improvement in student achievement and alignment with the federal system of accountability.

(b) The legislature further recognizes that it is the state's responsibility to provide schools and districts with the tools and resources necessary to improve student achievement. These tools include the necessary accounting and data reporting systems, assessment systems to monitor student achievement, and a system of general support, targeted assistance, recognition, and, if necessary, state intervention.

(2) The legislature has already charged the state board of education to develop criteria to identify schools and districts that are successful, in need of assistance, and those where students persistently fail, as well as to identify a range of intervention strategies and a performance incentive system. The legislature finds that the state board of education should build on the work that the board has already begun in these areas. As development of these formulas, processes, and systems progresses, the legislature should monitor the progress." [2009 c 548 § 501.]

Intent—2009 c 548: See note following RCW 28A.150.198.

Finding—2009 c 548: See note following RCW 28A.410.270.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Effective date—2005 c 497 §§ 104, 302, 402, and 406 through 408: "Sections 104, 302, 402, and 406 through 408 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005." [2005 c 497 § 410.]

Intent—Part headings not law—2005 c 497: See notes following RCW 28A.305.011.

Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4: See notes following RCW 28A.320.125.

Child abuse and neglect—Development of primary prevention program: RCW 28A.300.160.

Districts to develop programs and establish programs regarding child abuse and neglect prevention: RCW 28A.225.200.

Professional certification not required of superintendents or deputy or assistant superintendents: RCW 28A.410.120.

Use of force on children—Policy—Actions presumed unreasonable: RCW 9A.16.100.

Additional notes found at www.leg.wa.gov

28A.305.140 Waiver from provisions of RCW 28A.150.200 through 28A.150.220 authorized. (Effective until June 30, 2019.) (1) The state board of education may grant waivers to school districts from the provisions of RCW 28A.150.200 through 28A.150.220 on the basis that such waiver or waivers are necessary to:

(a) Implement successfully a local plan to provide for all students in the district an effective education system that is designed to enhance the educational program for each student. The local plan may include alternative ways to provide effective educational programs for students who experience difficulty with the regular education program; or

(b) Implement an innovation school or innovation zone designated under RCW 28A.630.081.

(2) The state board shall adopt criteria to evaluate the need for the waiver or waivers. [2011 c 260 § 8; 1990 c 33 § 267; (1992 c 141 § 302 expired September 1, 2000); 1985 c 349 § 6. Formerly RCW 28A.04.127.]

Findings—Intent—2011 c 260: See note following RCW 28A.630.080.

Expiration date—2011 c 260: See RCW 28A.630.089.

Additional notes found at www.leg.wa.gov

Chapter 28A.310 RCW

EDUCATIONAL SERVICE DISTRICTS

Sections

28A.310.495 Condensed compliance reports—Second-class districts.

28A.310.495 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 21.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.315 RCW

ORGANIZATION AND REORGANIZATION OF SCHOOL DISTRICTS

Sections

28A.315.325 Condensed compliance reports—Second-class districts.

28A.315.325 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 22.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.320 RCW

PROVISIONS APPLICABLE TO ALL DISTRICTS

Sections

28A.320.019 Condensed compliance reports—Second-class districts.
 28A.320.430 Special meetings of voters—Place, notice, procedure, record.

28A.320.019 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 23.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

28A.320.430 Special meetings of voters—Place, notice, procedure, record. All such special meetings shall be held at such schoolhouse or place as the board of directors may determine. The voting shall be by ballot, the ballots to be of white paper of uniform size and quality. At least ten days' notice of such special meeting shall be given by the school district superintendent, in the manner that notice is required to be given of the annual school election, which notice shall state the object or objects for which the meeting is to be held, and no other business shall be transacted at such meeting than such as is specified in the notice. The school district superintendent shall be the secretary of the meeting, and the chair of the board of directors or, in his or her absence, the senior director present, shall be chair of the meeting: PROVIDED, That in the absence of one or all of said officials, the qualified electors present may elect a chair or secretary, or both chair and secretary, of said meeting as occasion may require, from among their number. The secretary of the meeting shall make a record of the proceedings of the meeting, and when the secretary of such meeting has been elected by the qualified voters present, he or she shall within ten days thereafter, file the record of the proceedings, duly certified, with the superintendent of the district, and said records shall become a part of the records of the district, and be preserved as other records. [2011 c 336 § 708; 1990 c 33 § 338; 1969 ex.s. c 223 § 28A.58.380. Prior: 1909 c 97 p 350 § 2; RRS § 5029; prior: 1897 c 118 § 157. Formerly RCW 28A.58.380, 28.58.380, 28.58.390, part.]

Chapter 28A.323 RCW

JOINT SCHOOL DISTRICTS—SCHOOL DISTRICTS
IN TWO OR MORE
EDUCATIONAL SERVICE DISTRICTS

Sections

28A.323.110 Condensed compliance reports—Second-class districts.

28A.323.110 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 24.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

[2011 RCW Supp—page 502]

Chapter 28A.325 RCW

ASSOCIATED STUDENT BODIES

Sections

28A.325.040 Condensed compliance reports—Second-class districts.

28A.325.040 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 25.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.330 RCW

PROVISIONS APPLICABLE
TO SCHOOL DISTRICTS

Sections

28A.330.250 Condensed compliance reports.
 28A.330.251 Condensed compliance reports—Second-class districts.

28A.330.250 Condensed compliance reports. (1) Beginning September 1, 2011, second-class districts may annually submit a condensed compliance report to the superintendent of public instruction.

(2) The boards of directors of second-class districts that choose to submit a condensed compliance report must:

(a) Dedicate a public meeting for reviewing the report and receiving public testimony;

(b) Adopt the report at a public meeting; and

(c) Require the report to be signed by the school district superintendent and chair of the board and acknowledged before a notary public.

(3) Compliance requests from the superintendent of public instruction not tied to funding are voluntary for second-class districts submitting a condensed compliance report.

(4) For the purposes of this section, compliance requests do not include data requests required to be submitted in accordance with federal or state law or for purposes of program evaluation or accountability, including data for a comprehensive K-12 education data improvement system. [2011 c 45 § 1.]

Conflict with federal requirements—2011 c 45: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2011 c 45 § 51.]

28A.330.251 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 26.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.335 RCW
SCHOOL DISTRICTS' PROPERTY

Sections

28A.335.340 Condensed compliance reports—Second-class districts.

28A.335.340 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 27.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.340 RCW
SMALL HIGH SCHOOL COOPERATIVE PROJECTS

Sections

28A.340.100 Condensed compliance reports—Second-class districts.

28A.340.100 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 28.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.343 RCW
SCHOOL DIRECTOR DISTRICTS

Sections

28A.343.080 Condensed compliance reports—Second-class districts.

28A.343.080 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 29.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.345 RCW
WASHINGTON STATE
SCHOOL DIRECTORS' ASSOCIATION

Sections

28A.345.060 Audit of staff classifications and employees' salaries—Contract with human resources director—Copies.

28A.345.060 Audit of staff classifications and employees' salaries—Contract with human resources director—Copies. The association shall contract with the human resources director in the office of financial management to audit in odd-numbered years the association's staff classifications and employees' salaries. The association shall give copies of the audit reports to the office of financial management and the committees of each house of the legislature dealing with common schools. [2011 1st sp.s. c 43 § 467; 1986 c 158 § 3; 1983 c 187 § 4. Formerly RCW 28A.61.070.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 28A.400 RCW
EMPLOYEES

Sections

28A.400.005 Condensed compliance reports—Second-class districts.
28A.400.201 Enhanced salary allocation model for educator development and certification—Technical working group—Report and recommendation.
28A.400.205 Cost-of-living increases for employees.
28A.400.280 Employee benefits—Employer contributions.
28A.400.350 Liability, life, health, health care, accident, disability, and salary insurance authorized—When required—Premiums.

28A.400.005 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 30.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

28A.400.201 Enhanced salary allocation model for educator development and certification—Technical working group—Report and recommendation. (1) The legislature recognizes that providing students with the opportunity to access a world-class educational system depends on our continuing ability to provide students with access to world-class educators. The legislature also understands that continuing to attract and retain the highest quality educators will require increased investments. The legislature intends to enhance the current salary allocation model and recognizes that changes to the current model cannot be imposed without great deliberation and input from teachers, administrators, and classified employees. Therefore, it is the intent of the legislature to begin the process of developing an enhanced salary allocation model that is collaboratively designed to ensure the rationality of any conclusions regarding what constitutes adequate compensation.

(2) Beginning July 1, 2011, the office of the superintendent of public instruction, in collaboration with the human resources director in the office of financial management, shall convene a technical working group to recommend the details of an enhanced salary allocation model that aligns state expectations for educator development and certification with the compensation system and establishes recommendations for a concurrent implementation schedule. In addition to any other details the technical working group deems necessary, the technical working group shall make recommendations on the following:

- (a) How to reduce the number of tiers within the existing salary allocation model;
- (b) How to account for labor market adjustments;
- (c) How to account for different geographic regions of the state where districts may encounter difficulty recruiting and retaining teachers;
- (d) The role of and types of bonuses available;
- (e) Ways to accomplish salary equalization over a set number of years; and
- (f) Initial fiscal estimates for implementing the recommendations including a recognition that staff on the existing

salary allocation model would have the option to grandfather in permanently to the existing schedule.

(3) As part of its work, the technical working group shall conduct or contract for a preliminary comparative labor market analysis of salaries and other compensation for school district employees to be conducted and shall include the results in any reports to the legislature. For the purposes of this subsection, "salaries and other compensation" includes average base salaries, average total salaries, average employee basic benefits, and retirement benefits.

(4) The analysis required under subsection (1) of this section must:

(a) Examine salaries and other compensation for teachers, other certificated instructional staff, principals, and other building-level certificated administrators, and the types of classified employees for whom salaries are allocated;

(b) Be calculated at a statewide level that identifies labor markets in Washington through the use of data from the United States bureau of the census and the bureau of labor statistics; and

(c) Include a comparison of salaries and other compensation to the appropriate labor market for at least the following subgroups of educators: Beginning teachers and types of educational staff associates.

(5) The working group shall include representatives of the office of financial management, the professional educator standards board, the office of the superintendent of public instruction, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with appropriate expertise in compensation related matters. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders.

(6) The working group shall be monitored and overseen by the legislature and the quality education council created in RCW 28A.290.010. The working group shall make an initial report to the legislature by June 30, 2012, and shall include in its report recommendations for whether additional further work of the group is necessary. [2011 1st sp.s. c 43 § 468; 2010 c 236 § 7; 2009 c 548 § 601. Formerly RCW 43.41.398.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2009 c 548: See note following RCW 28A.150.198.

Finding—2009 c 548: See note following RCW 28A.410.270.

Intent—Finding—2009 c 548: See note following RCW 28A.305.130.

28A.400.205 Cost-of-living increases for employees.

(1) School district employees shall be provided an annual salary cost-of-living increase in accordance with this section.

(a) The cost-of-living increase shall be calculated by applying the rate of the yearly increase in the cost-of-living index to any state-funded salary base used in state funding formulas for teachers and other school district employees. Beginning with the 2001-02 school year, and for each subsequent school year, except for the 2011-12 and 2012-13 school

years, each school district shall be provided a cost-of-living allocation sufficient to grant this cost-of-living increase.

(b) A school district shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the district's salary schedules, collective bargaining agreements, and compensation policies. No later than the end of the school year, each school district shall certify to the superintendent of public instruction that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) Any funded cost-of-living increase shall be included in the salary base used to determine cost-of-living increases for school employees in subsequent years. For teachers and other certificated instructional staff, the rate of the annual cost-of-living increase funded for certificated instructional staff shall be applied to the base salary used with the statewide salary allocation schedule established under RCW 28A.150.410 and to any other salary models used to recognize school district personnel costs.

(2) For the purposes of this section, "cost-of-living index" means, for any school year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2011 1st sp.s. c 18 § 1; 2009 c 573 § 1; 2003 1st sp.s. c 20 § 1; 2001 c 4 § 2 (Initiative Measure No. 732, approved November 7, 2000).]

Effective date—2011 1st sp.s. c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 18 § 7.]

Effective date—2009 c 573: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 573 § 4.]

Severability—2001 c 4 (Initiative Measure No. 732): "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 4 § 5 (Initiative Measure No. 732, approved November 7, 2000).]

28A.400.280 Employee benefits—Employer contributions. (1) Except as provided in subsection (2) of this section, school districts may provide employer fringe benefit contributions after October 1, 1990, only for basic benefits. However, school districts may continue payments under contracts with employees or benefit providers in effect on April 13, 1990, until the contract expires.

(2) School districts may provide employer contributions after October 1, 1990, for optional benefit plans, in addition to basic benefits, only for employees included in pooling arrangements under this subsection. Optional benefits may include direct agreements as defined in chapter 48.150 RCW, but may not include employee beneficiary accounts that can be liquidated by the employee on termination of employment. Optional benefit plans may be offered only if:

(a) The school district pools benefit allocations among employees using a pooling arrangement that includes at least one employee bargaining unit and/or all nonbargaining group employees;

(b) Each full-time employee included in the pooling arrangement is offered basic benefits, including coverage for dependents, without a payroll deduction for premium charges;

(c) Each full-time employee included in the pooling arrangement, regardless of the number of dependents receiving basic coverage, receives the same additional employer contribution for other coverage or optional benefits; and

(d) For part-time employees included in the pooling arrangement, participation in optional benefit plans shall be governed by the same eligibility criteria and/or proration of employer contributions used for allocations for basic benefits.

(3) Savings accruing to school districts due to limitations on benefit options under this section shall be pooled and made available by the districts to reduce out-of-pocket premium expenses for employees needing basic coverage for dependents. School districts are not intended to divert state benefit allocations for other purposes. [2011 c 269 § 1; 1990 1st ex.s. c 11 § 6.]

Intent—1990 1st ex.s. c 11: See note following RCW 28A.400.200.

28A.400.350 Liability, life, health, health care, accident, disability, and salary insurance authorized—When required—Premiums. (1) The board of directors of any of the state’s school districts or educational service districts may make available liability, life, health, health care, accident, disability, and salary protection or insurance, direct agreements as defined in chapter 48.150 RCW, or any one of, or a combination of the types of employee benefits enumerated in this subsection, or any other type of insurance or protection, for the members of the boards of directors, the students, and employees of the school district or educational service district, and their dependents. Such coverage may be provided by contracts with private carriers, with the state health care authority after July 1, 1990, pursuant to the approval of the authority administrator, or through self-insurance or self-funding pursuant to chapter 48.62 RCW, or in any other manner authorized by law. Any direct agreement must comply with RCW 48.150.050.

(2) Whenever funds are available for these purposes the board of directors of the school district or educational service district may contribute all or a part of the cost of such protection or insurance for the employees of their respective school districts or educational service districts and their dependents. The premiums on such liability insurance shall be borne by the school district or educational service district.

After October 1, 1990, school districts may not contribute to any employee protection or insurance other than liability insurance unless the district’s employee benefit plan conforms to RCW 28A.400.275 and 28A.400.280.

(3) For school board members, educational service district board members, and students, the premiums due on such protection or insurance shall be borne by the assenting school board member, educational service district board member, or student. The school district or educational service district

may contribute all or part of the costs, including the premiums, of life, health, health care, accident or disability insurance which shall be offered to all students participating in interschool activities on the behalf of or as representative of their school, school district, or educational service district. The school district board of directors and the educational service district board may require any student participating in extracurricular interschool activities to, as a condition of participation, document evidence of insurance or purchase insurance that will provide adequate coverage, as determined by the school district board of directors or the educational service district board, for medical expenses incurred as a result of injury sustained while participating in the extracurricular activity. In establishing such a requirement, the district shall adopt regulations for waiving or reducing the premiums of such coverage as may be offered through the school district or educational service district to students participating in extracurricular activities, for those students whose families, by reason of their low income, would have difficulty paying the entire amount of such insurance premiums. The district board shall adopt regulations for waiving or reducing the insurance coverage requirements for low-income students in order to assure such students are not prohibited from participating in extracurricular interschool activities.

(4) All contracts for insurance or protection written to take advantage of the provisions of this section shall provide that the beneficiaries of such contracts may utilize on an equal participation basis the services of those practitioners licensed pursuant to chapters 18.22, 18.25, 18.53, 18.57, and 18.71 RCW. [2011 c 269 § 2; 2001 c 266 § 2. Prior: 1995 1st sp.s. c 6 § 18; 1995 c 126 § 1; 1993 c 492 § 226; prior: 1990 1st ex.s. c 11 § 3; 1990 c 74 § 1; 1988 c 107 § 16; 1985 c 277 § 8; 1977 ex.s. c 255 § 1; 1973 1st ex.s. c 9 § 1; 1971 ex.s. c 269 § 2; 1971 c 8 § 3; 1969 ex.s. c 237 § 3; 1969 ex.s. c 223 § 28A.58.420; prior: 1967 c 135 § 2, part; 1959 c 187 § 1, part. Formerly RCW 28A.58.420, 28.76.410, part.]

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

Intent—1990 1st ex.s. c 11: See note following RCW 28A.400.200.

Hospitalization and medical insurance authorized: RCW 41.04.180.

Operation of student transportation program responsibility of local district—Scope—Transporting of elderly—Insurance: RCW 28A.160.010.

Retirement allowance deductions for health care benefit plans: RCW 41.04.235.

Additional notes found at www.leg.wa.gov

**Chapter 28A.405 RCW
CERTIFICATED EMPLOYEES**

Sections

- 28A.405.005 Condensed compliance reports—Second-class districts.
- 28A.405.415 Bonuses—National board for professional standards certification.

28A.405.005 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 31.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

28A.405.415 Bonuses—National board for professional standards certification. (1) Certificated instructional staff who have attained certification from the national board for professional teaching standards shall receive a bonus each year in which they maintain the certification. The bonus shall be calculated as follows: The annual bonus shall be five thousand dollars in the 2007-08 school year. Thereafter, the annual bonus shall increase by inflation. For the 2011-12 and 2012-13 school years the annual bonus shall be subject to the availability of amounts appropriated for this purpose.

(2) Certificated instructional staff who have attained certification from the national board for professional teaching standards shall be eligible for bonuses in addition to that provided by subsection (1) of this section if the individual is in an instructional assignment in a school in which at least seventy percent of the students qualify for the free and reduced-price lunch program.

(3) The amount of the additional bonus under subsection (2) of this section for those meeting the qualifications of subsection (2) of this section is five thousand dollars.

(4) The bonuses provided under this section are in addition to compensation received under a district's salary schedule adopted in accordance with RCW 28A.405.200 and shall not be included in calculations of a district's average salary and associated salary limitations under RCW 28A.400.200.

(5) The bonuses provided under this section shall be paid in a lump sum amount. [2011 1st sp.s. c 18 § 4; 2009 c 539 § 6; 2008 c 175 § 2; 2007 c 398 § 2.]

Effective date—2011 1st sp.s. c 18: See note following RCW 28A.400.205.

Effective date—2009 c 539: See note following RCW 28A.655.200.

Findings—2007 c 398: "The legislature finds and declares:

(1) The national board for professional teaching standards has established high and rigorous standards for what highly accomplished teachers should know and be able to do in order to increase student learning results;

(2) The national board certifies teachers who meet these standards through a rigorous, performance-based assessment process;

(3) A certificate awarded by the national board attests that a teacher has met high and rigorous standards and has demonstrated the ability to make sound professional judgments about how to best meet students' learning needs and effectively help students meet challenging academic standards; and

(4) Teachers who attain national board certification should be acknowledged and rewarded in order to encourage more teachers to pursue certification for the benefit of Washington students." [2007 c 398 § 1.]

Chapter 28A.410 RCW CERTIFICATION

Sections

28A.410.046	Elementary mathematics specialists.
28A.410.062	Initial educator certificates—Application processing fee—Educator certification processing account.
28A.410.310	Condensed compliance reports—Second-class districts.

28A.410.046 Elementary mathematics specialists.

(1) For the purposes of this section, an elementary mathematics specialist is a certificated teacher who has demonstrated at least the following knowledge and skills:

(a) Enhanced mathematics content knowledge and skills necessary to provide students in grades kindergarten through eight a deep understanding of the essential academic learning requirements and performance expectations in mathematics;

(b) Knowledge and skills in a variety of instructional strategies for teaching mathematics content; and

(c) Knowledge and skills in instructional strategies targeted for students struggling with mathematics.

(2) The legislature encourages the professional educator standards board to develop standards for and adopt a specialty endorsement for elementary mathematics specialists as defined under this section.

(3) School districts may work with local colleges and universities, educator preparation programs, and educational service districts to develop and offer training and professional development opportunities in the knowledge and skills necessary for a teacher to be considered an elementary mathematics specialist under this section.

(4) School districts are encouraged to use elementary mathematics specialists for direct instruction of students using an itinerant teacher model where the specialist rotates from classroom to classroom within the school. [2011 c 209 § 2.]

Finding—Intent—2011 c 209: "The legislature finds that significant changes have been made in recent years to improve Washington's mathematics standards. Additional mathematics coursework, at a more rigorous level, will be required for high school graduation. Efforts to increase the rigor of high school mathematics will ultimately not be successful unless students in elementary and middle school are better prepared in mathematics. Successful preparation is more likely to occur if students have the opportunity to receive instruction from a teacher with proficiency in both mathematics content and effective instructional methods in mathematics for elementary and middle school students. It is the legislature's intent to encourage elementary teachers who enjoy and excel in mathematics to become specialists, and to encourage school districts to assign these specialists to teach elementary and middle school mathematics, thereby transmitting both their expertise and their enthusiasm for the subject to their students." [2011 c 209 § 1.]

28A.410.062 Initial educator certificates—Application processing fee—Educator certification processing account.

(1) The legislature finds that the current economic environment requires that the state, when appropriate, charge for some of the services provided directly to the users of those services. The office of the superintendent of public instruction is currently supported with state funds to process certification fees. In addition, the legislature finds that the processing of certifications should be moved to an online system that allows educators to manage their certifications and provides better information to policymakers. The legislature intends to assess a certification processing fee to eliminate state-funded support of the cost to issue educator certificates.

(2) In addition to the certification fee established under RCW 28A.410.060, the superintendent of public instruction shall charge an application processing fee for initial educator certificates and subsequent actions. The superintendent of public instruction shall establish the amount of the fee by rule under chapter 34.05 RCW. The superintendent shall set the fee at a sufficient level to defray the costs of administering the educator certification program under RCW 28A.300.040(9). Revenue generated through the processing fee shall be deposited in the educator certification processing account.

(3) The educator certification processing account is established in the custody of the state treasurer. The superintendent of public instruction shall deposit in the account all moneys received from the fees collected in subsection (2) of

this section. Moneys in the account may be spent only for the processing of educator certificates and subsequent actions. Disbursements from the account shall be on authorization of the superintendent of public instruction or the superintendent's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. [2011 1st sp.s. c 23 § 1.]

Effective date—2011 1st sp.s. c 23: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 23 § 2.]

28A.410.310 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 32.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.415 RCW

INSTITUTES, WORKSHOPS, AND TRAINING

Sections

- 28A.415.020 Credit on salary schedule for approved in-service training, continuing education, and internship.
- 28A.415.023 Credit on salary schedule for approved in-service training, continuing education, or internship—Course content—Rules.
- 28A.415.390 Condensed compliance reports—Second-class districts.

28A.415.020 Credit on salary schedule for approved in-service training, continuing education, and internship.

(1) Certificated personnel shall receive for each ten clock hours of approved in-service training attended the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(2) Certificated personnel shall receive for each ten clock hours of approved continuing education earned, as continuing education is defined by rule adopted by the professional educator standards board, the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(3) Certificated personnel shall receive for each forty clock hours of participation in an approved internship with a business, an industry, or government, as an internship is defined by rule of the professional educator standards board in accordance with RCW 28A.415.025, the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(4) An approved in-service training program shall be a program approved by a school district board of directors, which meet standards adopted by the professional educator standards board, and the development of said program has been participated in by an in-service training task force whose membership is the same as provided under RCW 28A.415.040, or a program offered by an education agency approved to provide in-service for the purposes of continuing education as provided for under rules adopted by the professional educator standards board, or both.

(5) Clock hours eligible for application to the salary schedule developed by the legislative evaluation and accountability program committee as described in subsections (1) and (2) of this section, shall be those hours acquired after August 31, 1987. Clock hours eligible for application to the salary schedule as described in subsection (3) of this section shall be those hours acquired after December 31, 1995.

(6) In-service training or continuing education in first peoples' language, culture, or oral tribal traditions provided by a sovereign tribal government participating in the Washington state first peoples' language, culture, and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section and RCW 28A.415.023.

(7) For the 2011-12 and 2012-13 school years, application of credits or credit equivalents earned under this section after October 1, 2010, to the salary schedule developed by the legislative evaluation and accountability program committee is subject to any conditions or limitations contained in the omnibus operating appropriations act. [2011 1st sp.s. c 18 § 5; 2007 c 319 § 3; 2006 c 263 § 808; 1995 c 284 § 2; 1990 c 33 § 415; 1987 c 519 § 1. Formerly RCW 28A.71.110.]

Effective date—2011 1st sp.s. c 18: See note following RCW 28A.400.205.

Findings—Short title—2007 c 319: See notes following RCW 28A.410.045.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Findings—1995 c 284: "The legislature finds that if students are to succeed in an increasingly competitive economy, they will need to be taught by teachers who are aware of the technological innovations and changes that are occurring throughout business, industry, and government. Having teachers who are more aware of these changes will lead to improvements in curriculum and instruction, thereby making public schools more relevant to the future career and personal needs of our students." [1995 c 284 § 1.]

28A.415.023 Credit on salary schedule for approved in-service training, continuing education, or internship—

Course content—Rules. (1) Credits earned by certificated instructional staff after September 1, 1995, shall be eligible for application to the salary schedule developed by the legislative evaluation and accountability program committee only if the course content:

(a) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.655.110, the annual school performance report, for the school in which the individual is assigned;

(b) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(c) Is necessary to obtain an endorsement as prescribed by the Washington professional educator standards board;

(d) Is specifically required to obtain advanced levels of certification;

(e) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff; or

(f) Addresses research-based assessment and instructional strategies for students with dyslexia, dysgraphia, and language disabilities when addressing learning goal one under RCW 28A.150.210, as applicable and appropriate for individual certificated instructional staff.

(2) For the purpose of this section, "credits" mean college quarter hour credits and equivalent credits for approved in-service, approved continuing education, or approved internship hours computed in accordance with RCW 28A.415.020.

(3) The superintendent of public instruction shall adopt rules and standards consistent with the limits established by this section for certificated instructional staff.

(4) For the 2011-12 and 2012-13 school years, application of credits or credit equivalents earned under this section after October 1, 2010, to the salary schedule developed by the legislative evaluation and accountability program committee is subject to any conditions or limitations contained in the omnibus operating appropriations act. [2011 1st sp.s. c 18 § 6. Prior: 2005 c 497 § 209; 2005 c 393 § 1; 1997 c 90 § 1.]

Effective date—2011 1st sp.s. c 18: See note following RCW 28A.400.205.

Intent—Part headings not law—Effective date—2005 c 497: See notes following RCW 28A.305.011.

28A.415.390 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 33.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.500 RCW

LOCAL EFFORT ASSISTANCE

Sections

28A.500.060 Condensed compliance reports—Second-class districts.

28A.500.060 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 34.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.505 RCW

SCHOOL DISTRICTS' BUDGETS

Sections

28A.505.220 Student achievement program—General fund allocation.

28A.505.230 Condensed compliance reports—Second-class districts.

28A.505.220 Student achievement program—General fund allocation. (1) Total distributions for the student achievement program from the general fund to each school district shall be based upon the average number of full-time equivalent students in the school district during the previous school year as reported to the office of the superintendent of public instruction by August 31st of the previous school year. The superintendent of public instruction shall ensure that moneys generated by skill center students are returned to skill centers.

[2011 RCW Supp—page 508]

(2) The allocation rate per full-time equivalent student shall be three hundred dollars in the 2005-06 school year, three hundred seventy-five dollars in the 2006-07 school year, and four hundred fifty dollars in the 2007-08 school year. For each subsequent school year, the amount allocated per full-time equivalent student shall be adjusted for inflation by the implicit price deflator as published by the federal bureau of labor statistics. However, for the 2011-12 and 2012-13 school years, the amount allocated per full-time equivalent student shall be as specified in the omnibus appropriations act. These allocations per full-time equivalent student shall be supported from the distributions from the education legacy trust account created in RCW 83.100.230 and the state general fund.

(3) The school district annual amounts as defined in subsection (2) of this section shall be distributed on the monthly apportionment schedule as defined in RCW 28A.510.250. [2011 1st sp.s. c 17 § 1. Prior: 2009 c 541 § 1; 2009 c 479 § 18; 2009 c 4 § 901; 2008 c 170 § 401; 2005 c 514 § 1103.]

Effective date—2011 1st sp.s. c 17: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 17 § 2.]

Effective date—2009 c 541: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 541 § 2.]

Effective date—2009 c 479: See note following RCW 2.56.030.

Effective date—2009 c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 18, 2009]." [2009 c 4 § 911.]

Effective date—2008 c 170 § 401: "Section 401 of this act takes effect September 1, 2008." [2008 c 170 § 409.]

Findings—Intent—Part headings not law—2008 c 170: See RCW 28A.700.005 and 28A.700.901.

Effective date—2005 c 514: See note following RCW 83.100.230.

Part headings not law—Severability—2005 c 514: See notes following RCW 82.12.808.

28A.505.230 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 35.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.510 RCW

APPORTIONMENT TO DISTRICT— DISTRICT ACCOUNTING

Sections

28A.510.010 Condensed compliance reports—Second-class districts.

28A.510.250 By state superintendent.

28A.510.010 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 36.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

28A.510.250 By state superintendent. (1) On or before the last business day of September 1969 and each month thereafter, the superintendent of public instruction shall apportion from the state general fund to the several educational service districts of the state the proportional share of the total annual amount due and apportionable to such educational service districts for the school districts thereof as follows:

September	9%
October	9%
November	5.5%
December	9%
January	9%
February	9%
March	9%
April	9%
May	5.5%
June	6.0%
July	10.0%
August	10.0%

The annual amount due and apportionable shall be the amount apportionable for all apportionment credits estimated to accrue to the schools during the apportionment year beginning September first and continuing through August thirty-first. Appropriations made for school districts for each year of a biennium shall be apportioned according to the schedule set forth in this section for the fiscal year starting September 1st of the then calendar year and ending August 31st of the next calendar year, except as provided in subsection (2) of this section. The apportionment from the state general fund for each month shall be an amount which will equal the amount due and apportionable to the several educational service districts during such month: PROVIDED, That any school district may petition the superintendent of public instruction for an emergency advance of funds which may become apportionable to it but not to exceed ten percent of the total amount to become due and apportionable during the school districts apportionment year. The superintendent of public instruction shall determine if the emergency warrants such advance and if the funds are available therefor. If the superintendent determines in the affirmative, he or she may approve such advance and, at the same time, add such an amount to the apportionment for the educational service district in which the school district is located: PROVIDED, That the emergency advance of funds and the interest earned by school districts on the investment of temporary cash surpluses resulting from obtaining such advance of state funds shall be deducted by the superintendent of public instruction from the remaining amount apportionable to said districts during that apportionment year in which the funds are advanced.

(2) In the 2010-11 school year, the June apportionment payment to school districts shall be reduced by one hundred twenty-eight million dollars, and an additional apportionment payment shall be made on July 1, 2011, in the amount of one hundred twenty-eight million dollars. This July 1st payment shall be in addition to the regularly calculated July apportionment payment. [2011 1st sp.s. c 4 § 1; 1990 c 33 § 426; 1982 c 136 § 1; 1981 c 282 § 1; 1981 c 5 § 32; 1980 c 6 § 5; 1979 ex.s. c 237 § 1; 1975-'76 2nd ex.s. c 118 § 27; 1975 1st ex.s.

c 275 § 67; 1974 ex.s. c 89 § 1; 1972 ex.s. c 146 § 1; 1970 ex.s. c 15 § 15. Prior: 1969 ex.s. c 184 § 3; 1969 ex.s. c 176 § 108; 1969 ex.s. c 223 § 28A.48.010; prior: 1965 ex.s. c 162 § 1; 1959 c 276 § 3; prior: 1945 c 141 § 3, part; 1923 c 96 § 1; 1911 c 118 § 1; 1909 c 97 p 312 §§ 1, 2, 3; Rem. Supp. 1945 § 4940-3, part. Formerly RCW 28A.48.010, 28.48.010.]

Effective date—2011 1st sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 31, 2011]." [2011 1st sp.s. c 4 § 2.]

Student transportation allocation—Notice—Revised eligible student data, when—Allocation payments, amounts, when: RCW 28A.160.190.

Vehicle acquisition—Reimbursement schedule—Maintenance and operation—Depreciation schedule: RCW 28A.160.200.

Additional notes found at www.leg.wa.gov

Chapter 28A.515 RCW

COMMON SCHOOL CONSTRUCTION FUND

Sections

28A.515.010 Condensed compliance reports—Second-class districts.

28A.515.010 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 37.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.520 RCW

FOREST RESERVE FUNDS DISTRIBUTION

Sections

28A.520.020 Distribution of forest reserve funds—Revolving account created—Use—Apportionments from—As affects basic education allocation.

28A.520.030 Condensed compliance reports—Second-class districts.

28A.520.020 Distribution of forest reserve funds—Revolving account created—Use—Apportionments from—As affects basic education allocation. (1) There shall be a fund known as the federal forest revolving account. The state treasurer, who shall be custodian of the revolving account, shall deposit into the revolving account the funds for each county received by the state in accordance with Title 16, section 500, United States Code. The state treasurer shall distribute these moneys to the counties according to the determined proportional area. The county legislative authority shall expend fifty percent of the money for the benefit of the public roads and other public purposes as authorized by federal statute or public schools of such county and not otherwise. Disbursements by the counties of the remaining fifty percent of the money shall be as authorized by the superintendent of public instruction, or the superintendent's designee, and shall occur in the manner provided in subsection (2) of this section.

(2) No later than thirty days following receipt of the funds from the federal government, the superintendent of public instruction shall apportion moneys distributed to coun-

ties for schools to public school districts in the respective counties in proportion to the number of resident full-time equivalent students enrolled in each public school district to the number of resident full-time equivalent students enrolled in public schools in the county. In apportioning these funds, the superintendent of public instruction shall utilize the October enrollment count.

(3) If the amount received by any public school district pursuant to subsection (2) of this section is less than the basic education allocation to which the district would otherwise be entitled, the superintendent of public instruction shall apportion to the district, in the manner provided by RCW 28A.510.250, an amount which shall be the difference between the amount received pursuant to subsection (2) of this section and the basic education allocation to which the district would otherwise be entitled.

(4) All federal forest funds shall be expended in accordance with the requirements of Title 16, section 500, United States Code, as now existing or hereafter amended.

(5) The definition of resident student for purposes of this section shall be based on rules adopted by the superintendent of public instruction, which shall consider and address the impact of alternative learning experience students on federal forest funds distribution. [2011 c 278 § 1; 1991 sp.s. c 13 § 113; 1990 c 33 § 430; 1985 c 311 § 2; 1982 c 126 § 2. Formerly RCW 28A.02.310.]

Effective date—2011 c 278 § 1: "Section 1 of this act takes effect September 1, 2011." [2011 c 278 § 3.]

Rules—2011 c 278: "The superintendent of public instruction shall adopt rules to implement RCW 28A.520.020 that take effect September 1, 2011." [2011 c 278 § 2.]

Additional notes found at www.leg.wa.gov

28A.520.030 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 38.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.525 RCW BOND ISSUES

Sections

28A.525.095 Condensed compliance reports—Second-class districts.

28A.525.095 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 39.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.527 RCW SCHOOL FACILITIES—2008 BOND ISSUE

Sections

28A.527.100 Condensed compliance reports—Second-class districts.

[2011 RCW Supp—page 510]

28A.527.100 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 40.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.530 RCW DISTRICT BONDS FOR LAND, BUILDINGS, AND EQUIPMENT

Sections

28A.530.090 Condensed compliance reports—Second-class districts.

28A.530.090 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 41.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.535 RCW VALIDATING INDEBTEDNESS

Sections

28A.535.090 Condensed compliance reports—Second-class districts.

28A.535.090 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 42.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.540 RCW CAPITAL FUND AID BY NONHIGH SCHOOL DISTRICTS

Sections

28A.540.120 Condensed compliance reports—Second-class districts.

28A.540.120 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 43.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.545 RCW PAYMENT TO HIGH SCHOOL DISTRICTS

Sections

28A.545.130 Condensed compliance reports—Second-class districts.

28A.545.130 Condensed compliance reports—Second-class districts. Any compliance reporting requirements

as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 44.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.600 RCW STUDENTS

Sections

28A.600.006	Condensed compliance reports—Second-class districts.
28A.600.120	Washington scholars' program—Administration—Cooperation with other agencies. (<i>Effective July 1, 2012.</i>)
28A.600.130	Washington scholars' program—Planning committee—Composition—Duties. (<i>Effective July 1, 2012.</i>)
28A.600.140	Washington scholars' program—Principals' association to submit names to office of student financial assistance. (<i>Effective July 1, 2012.</i>)
28A.600.150	Washington scholars' program—Selection of scholars and scholars-alternates—Notification process—Certificates—Awards ceremony. (<i>Effective July 1, 2012.</i>)
28A.600.285	Dual credit programs—Impact on financial aid eligibility—Guidelines. (<i>Effective July 1, 2012.</i>)
28A.600.310	Running start program—Enrollment in institutions of higher education—Student fees—Fee waivers—Transmittal of funds—Report on program financial support.

28A.600.006 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 45.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

28A.600.120 Washington scholars' program—Administration—Cooperation with other agencies. (*Effective July 1, 2012.*) The office of student financial assistance shall have the responsibility for administration of the Washington scholars program. The program will be developed cooperatively with the Washington association of secondary school principals, a voluntary professional association of secondary school principals. The cooperation of other state agencies and private organizations having interest and responsibility in public and private education shall be sought for planning assistance. [2011 1st sp.s. c 11 § 126; 1985 c 370 § 32; 1981 c 54 § 3. Formerly RCW 28A.58.824.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28A.600.130 Washington scholars' program—Planning committee—Composition—Duties. (*Effective July 1, 2012.*) The office of student financial assistance shall establish a planning committee to develop criteria for screening and selection of the Washington scholars each year in accordance with RCW 28A.600.110(1). It is the intent that these criteria shall emphasize scholastic achievement but not exclude such criteria as leadership ability and community contribution in final selection procedures. The Washington scholars planning committee shall have members from selected state agencies and private organizations having an interest and responsibility in education, including but not

limited to, the office of superintendent of public instruction, the council of presidents, the state board for community and technical colleges, and the Washington friends of higher education. [2011 1st sp.s. c 11 § 127; 2006 c 263 § 916; 1995 1st sp.s. c 5 § 1; 1990 c 33 § 500; 1985 c 370 § 33; 1981 c 54 § 4. Formerly RCW 28A.58.826.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Additional notes found at www.leg.wa.gov

28A.600.140 Washington scholars' program—Principals' association to submit names to office of student financial assistance. (*Effective July 1, 2012.*) Each year on or before March 1st, the Washington association of secondary school principals shall submit to the office of student financial assistance the names of graduating senior high school students who have been identified and recommended to be outstanding in academic achievement by their school principals based on criteria to be established under RCW 28A.600.130. [2011 1st sp.s. c 11 § 128; 1990 c 33 § 501; 1985 c 370 § 34; 1981 c 54 § 5. Formerly RCW 28A.58.828.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28A.600.150 Washington scholars' program—Selection of scholars and scholars-alternates—Notification process—Certificates—Awards ceremony. (*Effective July 1, 2012.*) Each year, three Washington scholars and one Washington scholars-alternate shall be selected from the students nominated under RCW 28A.600.140, except that during fiscal year 2007, no more than two scholars plus one alternate may be selected. The office of student financial assistance shall notify the students so designated, their high school principals, the legislators of their respective districts, and the governor when final selections have been made.

The office, in conjunction with the governor's office, shall prepare appropriate certificates to be presented to the Washington scholars and the Washington scholars-alternates. An awards ceremony at an appropriate time and place shall be planned by the office in cooperation with the Washington association of secondary school principals, and with the approval of the governor. [2011 1st sp.s. c 11 § 129; 2005 c 518 § 916; 1999 c 159 § 2; 1985 c 370 § 35; 1981 c 54 § 6. Formerly RCW 28A.58.830.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Findings—Intent—1999 c 159: "The legislature finds that approximately thirty-five percent of the recipients of the Washington scholars award under RCW 28A.600.100 through 28A.600.150 choose to enroll in an out-of-state college and therefore do not use the grants that would have been available to them under RCW 28B.80.245 had they chosen to attend a college or university in the state of Washington. It is the intent of the legislature to require high school seniors who are announced as recipients of the Washington scholars award to demonstrate in a timely manner that they will be

using any grants they may receive with their awards to enroll in a college or university in Washington state during the fall term of the same year in which they receive the award. Any grants not used by initial recipients should be awarded to alternate recipients who must also demonstrate in a timely manner that they will be using their grants to enroll in a Washington college or university in Washington state during the fall term." [1999 c 159 § 1.]

Additional notes found at www.leg.wa.gov

28A.600.285 Dual credit programs—Impact on financial aid eligibility—Guidelines. (*Effective July 1, 2012.*) The superintendent of public instruction and the office of student financial assistance shall develop advising guidelines to assure that students and parents understand that college credits earned in high school dual credit programs may impact eligibility for financial aid. [2011 1st sp.s. c 11 § 131; 2009 c 450 § 4.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—2009 c 450: See note following RCW 28A.600.280.

28A.600.310 Running start program—Enrollment in institutions of higher education—Student fees—Fee waivers—Transmittal of funds—Report on program financial support. (1) Eleventh and twelfth grade students or students who have not yet received the credits required for the award of a high school diploma and are eligible to be in the eleventh or twelfth grades may apply to a participating institution of higher education to enroll in courses or programs offered by the institution of higher education. A student receiving home-based instruction enrolling in a public high school for the sole purpose of participating in courses or programs offered by institutions of higher education shall not be counted by the school district in any required state or federal accountability reporting if the student's parents or guardians filed a declaration of intent to provide home-based instruction and the student received home-based instruction during the school year before the school year in which the student intends to participate in courses or programs offered by the institution of higher education. Students receiving home-based instruction under chapter 28A.200 RCW and students attending private schools approved under chapter 28A.195 RCW shall not be required to meet the student learning goals, obtain a certificate of academic achievement or a certificate of individual achievement to graduate from high school, or to master the essential academic learning requirements. However, students are eligible to enroll in courses or programs in participating universities only if the board of directors of the student's school district has decided to participate in the program. Participating institutions of higher education, in consultation with school districts, may establish admission standards for these students. If the institution of higher education accepts a secondary school pupil for enrollment under this section, the institution of higher education shall send written notice to the pupil and the pupil's school district within ten days of acceptance. The notice shall indicate the course and hours of enrollment for that pupil.

(2)(a) In lieu of tuition and fees, as defined in RCW 28B.15.020 and 28B.15.041:

(i) Running start students shall pay to the community or technical college all other mandatory fees as established by

each community or technical college and, in addition, the state board for community and technical colleges may authorize a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041; and

(ii) All other institutions of higher education operating a running start program may charge running start students a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041 in addition to technology fees.

(b) The fees charged under this subsection (2) shall be prorated based on credit load.

(3)(a) The institutions of higher education must make available fee waivers for low-income running start students. Each institution must establish a written policy for the determination of low-income students before offering the fee waiver. A student shall be considered low income and eligible for a fee waiver upon proof that the student is currently qualified to receive free or reduced-price lunch. Acceptable documentation of low-income status may also include, but is not limited to, documentation that a student has been deemed eligible for free or reduced-price lunches in the last five years, or other criteria established in the institution's policy.

(b) Institutions of higher education, in collaboration with relevant student associations, shall aim to have students who can benefit from fee waivers take advantage of these waivers. Institutions shall make every effort to communicate to students and their families the benefits of the waivers and provide assistance to students and their families on how to apply. Information about waivers shall, to the greatest extent possible, be incorporated into financial aid counseling, admission information, and individual billing statements. Institutions also shall, to the greatest extent possible, use all means of communication, including but not limited to web sites, online catalogues, admission and registration forms, mass e-mail messaging, social media, and outside marketing to ensure that information about waivers is visible, compelling, and reaches the maximum number of students and families that can benefit.

(4) The pupil's school district shall transmit to the institution of higher education an amount per each full-time equivalent college student at statewide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW. The superintendent of public instruction, the higher education coordinating board, and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The funds received by the institution of higher education from the school district shall not be deemed tuition or operating fees and may be retained by the institution of higher education. A student enrolled under this subsection shall be counted for the purpose of meeting enrollment targets in accordance with terms and conditions specified in the omnibus appropriations act.

(5) The state board for community and technical colleges, in collaboration with the other institutions of higher education that participate in the running start program and the office of the superintendent of public instruction, shall identify, assess, and report on alternatives for providing ongoing and adequate financial support for the program. Such alternatives shall include but are not limited to student tuition, increased support from local school districts, and reallocation of existing state financial support among the community and technical college system to account for differential running start enrollment levels and impacts. The state board for community and technical colleges shall report the assessment of alternatives to the governor and to the appropriate fiscal and policy committees of the legislature by September 1, 2010. [2011 1st sp.s. c 10 § 10; 2009 c 450 § 8; 2005 c 125 § 1; 1994 c 205 § 2; 1993 c 222 § 1; 1990 1st ex.s. c 9 § 402.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

Findings—Intent—2009 c 450: See note following RCW 28A.600.280.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

Additional notes found at www.leg.wa.gov

Chapter 28A.620 RCW COMMUNITY EDUCATION PROGRAMS

Sections

28A.620.030 Condensed compliance reports—Second-class districts.

28A.620.030 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 46.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.623 RCW MEAL PROGRAMS

Sections

28A.623.005 Condensed compliance reports—Second-class districts.

28A.623.005 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 47.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.625 RCW AWARDS

Sections

28A.625.005 Condensed compliance reports—Second-class districts.

28A.625.005 Condensed compliance reports—Second-class districts. Any compliance reporting requirements

as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 48.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

Chapter 28A.630 RCW

TEMPORARY PROVISIONS—SPECIAL PROJECTS

Sections

28A.630.002 Condensed compliance reports—Second-class districts.

INNOVATION SCHOOLS AND ZONES

28A.630.080 Application—Process—Criteria for waivers. (*Expires June 30, 2019.*)

28A.630.081 Application deadlines—Review—Approval—Duration of designation. (*Expires June 30, 2019.*)

28A.630.082 Proposed plan—Plan approval. (*Expires June 30, 2019.*)

28A.630.083 Waivers for innovation schools and innovation zones. (*Expires June 30, 2019.*)

28A.630.084 Reports—Dissemination of information. (*Expires June 30, 2019.*)

28A.630.085 Revocation of designation. (*Expires June 30, 2019.*)

28A.630.089 Expiration date—2011 c 260.

28A.630.400 Paraeducator associate of arts degree. (*Effective July 1, 2012.*)

28A.630.002 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 49.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

INNOVATION SCHOOLS AND ZONES

28A.630.080 Application—Process—Criteria for waivers. (*Expires June 30, 2019.*) (1) The office of the superintendent of public instruction shall develop a process for school districts to apply to have one or more schools within the district designated as an innovation school, with a priority on schools focused on the arts, science, technology, engineering, and mathematics (A-STEM) that actively partners with the community, business, industry, and higher education, and uses project-based or hands-on learning. A group of schools that share common interests, such as geographical location, or that sequentially serve classes of students as they progress through elementary and secondary grades may be designated as an innovation zone. An innovation zone may include all schools within a school district. Consortia of multiple districts may also apply for designation as an innovation zone, to include all schools within the participating districts.

(2) Applications requesting designation of innovation schools or innovation zones must be developed by the school district in collaboration with educators, parents, businesses, industries, and the communities of participating schools. School districts must ensure that each school has substantial opportunity to participate in the development of the innovation plan under RCW 28A.630.082.

(3) The office of the superintendent of public instruction shall develop common criteria for reviewing applications and for evaluating the need for waivers of state statutes and

administrative rules as provided under RCW 28A.630.083. [2011 c 260 § 2.]

Findings—Intent—2011 c 260: "(1) The legislature finds that:

(a) School district boards of directors are encouraged to support the expansion of innovative K-12 school or K-12 program models, with a priority on models focused on the arts, science, technology, engineering, and mathematics (A-STEM) that partner with business, industry, and higher education to increase A-STEM pathways that use project-based or hands-on learning for elementary, middle, and high school students; and

(b) Particularly in schools and communities that are struggling to improve student academic outcomes and close the educational opportunity gap, there is a critical need for innovative models of public education, with a priority on models that are tailored to A-STEM-related programs that implement interdisciplinary instructional delivery methods that are engaging, rigorous, and culturally relevant at each grade level.

(2) Therefore, the legislature intends to create a framework for change that includes:

(a) Leveraging community assets;

(b) Improving staff capacity and effectiveness;

(c) Developing family, school, business, industry, A-STEM professionals, and higher education partnerships in A-STEM education at all grade levels that can lead to industry certification or dual high school and college credit;

(d) Implementing evidence-based practices proven to be effective in reducing demographic disparities in student achievement; and

(e) Enabling educators and parents of selected schools and school districts to restructure school operations and develop model A-STEM programs that will improve student performance and close the educational opportunity gap." [2011 c 260 § 1.]

28A.630.081 Application deadlines—Review—Approval—Duration of designation. (Expires June 30, 2019.) (1) Applications to designate innovation schools and innovation zones must be submitted by school district boards of directors to their respective educational service districts by January 6, 2012, to be implemented beginning in the 2012-13 school year. Innovation plans must be able to be implemented without supplemental state funds.

(2) Each educational service district boards of directors shall review applications from within the district using the common criteria developed by the office of the superintendent of public instruction. Each educational service district shall recommend approval by the office of the superintendent of public instruction of no more than three applications from within each educational service district, no fewer than two of which must be focused on A-STEM-related innovations and no more than one of which may focus on other innovations. However, any educational service district with over three hundred fifty thousand full-time equivalent students may recommend approval of no more than ten applications from within the educational service district, no fewer than half of which must be focused on A-STEM-related innovations and no more than half of which may focus on other innovations. At least one of the recommended applications in each educational service district must propose an innovation zone, as long as the application meets the review criteria.

(3) The office of the superintendent of public instruction shall approve the innovation plans of the applicants recommended by the educational service districts. School districts that have applied shall be notified by March 1, 2012, whether they were selected.

(4) Designation of innovation schools and innovation zones under this section shall be for a six-year period, beginning in the 2012-13 school year, unless the designation is revoked in accordance with RCW 28A.630.085. [2011 c 260 § 3.]

Findings—Intent—2011 c 260: See note following RCW 28A.630.080.

28A.630.082 Proposed plan—Plan approval. (Expires June 30, 2019.) (1) Each application for designation of an innovation school or innovation zone must include a proposed plan that:

(a) Defines the scope of the innovation school or innovation zone and describes why designation would enhance the ability of the school or schools to improve student achievement and close the educational opportunity gap including by implementing a program focused on the arts, science, technology, engineering, and mathematics themes that partner with the community, business, industry, and higher education and use project-based or hands-on learning;

(b) Enumerates specific, research-based activities and innovations to be carried out under the designation;

(c) Justifies each request for waiver of state statutes or administrative rules as provided under RCW 28A.630.083;

(d) Justifies any requests for waiver of state statutes or administrative rules that are in addition to the waivers authorized under RCW 28A.630.083 that are necessary to carry out the proposed innovations;

(e) Identifies the improvements in student achievement and the educational opportunity gap that are expected to be accomplished through the innovations;

(f) Includes budget plans and anticipated sources of funding, including private grants and contributions, if any;

(g) Identifies the technical resources desired, the potential costs of those resources, and the institutions of higher education, educational service districts, businesses, industries, or consultants available to provide such services;

(h) Identifies the multiple measures for evaluation and accountability to be used to measure improvement in student achievement, closure in the educational opportunity gap, and the overall performance of the innovation school or innovation zone, including but not limited to assessment scores, graduation rates, and dropout rates;

(i) Includes a written statement that school directors and administrators are willing to exempt the designated school or schools from specifically identified local rules, as needed;

(j) Includes a written statement that school directors and local bargaining agents will modify those portions of their local agreements as applicable for the designated school or schools;

(k) Includes written statements of support from the district's board of directors, the superintendent, the principal and staff of schools seeking designation, each local employee association affected by the proposal, the local parent organization, and statements of support, willingness to participate, or concerns from any interested parent, business, institution of higher education, or community organization; and

(l) Commits all parties to work cooperatively during the term of the pilot project.

(2) A plan to designate an innovation school or innovation zone must be approved by a majority of the staff assigned to the school or schools participating in the plan. [2011 c 260 § 4.]

Findings—Intent—2011 c 260: See note following RCW 28A.630.080.

28A.630.083 Waivers for innovation schools and innovation zones. (Expires June 30, 2019.) (1)(a) The superintendent of public instruction and the state board of education, each within the scope of their statutory authority, may grant waivers of state statutes and administrative rules for designated innovation schools and innovation zones as follows:

(i) Waivers may be granted under RCW 28A.655.180 and 28A.305.140;

(ii) Waivers may be granted to permit the commingling of funds appropriated by the legislature on a categorical basis for such programs as, but not limited to, highly capable students, transitional bilingual instruction, and learning assistance; and

(iii) Waivers may be granted of other administrative rules that in the opinion of the superintendent of public instruction or the state board of education are necessary to be waived to implement an innovation school or innovation zone.

(b) State administrative rules dealing with public health, safety, and civil rights, including accessibility for individuals with disabilities, may not be waived.

(2) At the request of a school district, the superintendent of public instruction may petition the United States department of education or other federal agencies to waive federal regulations necessary to implement an innovation school or innovation zone.

(3) The state board of education may grant waivers for innovation schools or innovation zones of administrative rules pertaining to calculation of course credits for high school courses.

(4) Waivers may be granted under this section for a period not to exceed the duration of the designation of the innovation school or innovation zone.

(5) The superintendent of public instruction and the state board of education shall provide an expedited review of requests for waivers for designated innovation schools and innovation zones. Requests may be denied if the superintendent of public instruction or the state board of education conclude that the waiver:

(a) Is likely to result in a decrease in academic achievement in the innovation school or innovation zone;

(b) Would jeopardize the receipt of state or federal funds that a school district would otherwise be eligible to receive, unless the school district submits a written authorization for the waiver acknowledging that receipt of these funds could be jeopardized; or

(c) Would violate state or federal laws or rules that are not authorized to be waived. [2011 c 260 § 5.]

Findings—Intent—2011 c 260: See note following RCW 28A.630.080.

28A.630.084 Reports—Dissemination of information. (Expires June 30, 2019.) (1) The office of the superintendent of public instruction shall report to the education committees of the legislature on the progress of the designated innovation schools and innovation zones by January 15, 2013, and January 15th of each odd-numbered year thereafter. The report must include recommendations for waiver of state laws and administrative rules in addition to the waiv-

ers authorized under RCW 28A.630.083, as identified in innovation plans submitted by school districts.

(2) Each innovation school and innovation zone must submit an annual report to the office of the superintendent of public instruction on their progress.

(3) The office of the superintendent of public instruction, through the center for the improvement of student learning, must collect and disseminate to all school districts and other interested parties information about the innovation schools and innovation zones. [2011 c 260 § 6.]

Findings—Intent—2011 c 260: See note following RCW 28A.630.080.

28A.630.085 Revocation of designation. (Expires June 30, 2019.) After reviewing the annual reports of each innovation school and zone, if the office of the superintendent of public instruction determines that the school or zone is not increasing progress over time as determined by the multiple measures for evaluation and accountability provided in the school or zone plan in accordance with RCW 28A.630.082 then the superintendent shall revoke the designation. [2011 c 260 § 7.]

Findings—Intent—2011 c 260: See note following RCW 28A.630.080.

28A.630.089 Expiration date—2011 c 260. This act expires June 30, 2019. [2011 c 260 § 11.]

28A.630.400 Paraeducator associate of arts degree. (Effective July 1, 2012.) (1) The professional educator standards board and the state board for community and technical colleges, in consultation with the superintendent of public instruction, the state apprenticeship training council, and community colleges, shall adopt rules as necessary under chapter 34.05 RCW to implement the paraeducator associate of arts degree.

(2) As used in this section, a "paraeducator" is an individual who has completed an associate of arts degree for a paraeducator. The paraeducator may be hired by a school district to assist certificated instructional staff in the direct instruction of children in small and large groups, individualized instruction, testing of children, recordkeeping, and preparation of materials. The paraeducator shall work under the direction of instructional certificated staff.

(3) The training program for a paraeducator associate of arts degree shall include, but is not limited to, the general requirements for receipt of an associate of arts degree and training in the areas of introduction to childhood education, orientation to children with disabilities, fundamentals of childhood education, creative activities for children, instructional materials for children, fine art experiences for children, the psychology of learning, introduction to education, child health and safety, child development and guidance, first aid, and a practicum in a school setting.

(4) Consideration shall be given to transferability of credit earned in this program to teacher preparation programs at colleges and universities. [2011 1st sp.s. c 11 § 132; 2006 c 263 § 815. Prior: 1995 c 335 § 202; 1995 c 77 § 27; 1991 c 285 § 2; 1989 c 370 § 1. Formerly RCW 28A.04.180.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Additional notes found at www.leg.wa.gov

Chapter 28A.650 RCW EDUCATION TECHNOLOGY

Sections

- 28A.650.015 Education technology plan—Educational technology advisory committee. (*Effective until July 1, 2012.*)
28A.650.015 Education technology plan—Educational technology advisory committee. (*Effective July 1, 2012.*)

28A.650.015 Education technology plan—Educational technology advisory committee. (*Effective until July 1, 2012.*) (1) The superintendent of public instruction, to the extent funds are appropriated, shall develop and implement a Washington state K-12 education technology plan. The technology plan shall be updated on at least a biennial basis, shall be developed to coordinate and expand the use of education technology in the common schools of the state. The plan shall be consistent with applicable provisions of chapter 43.105 RCW. The plan, at a minimum, shall address:

(a) The provision of technical assistance to schools and school districts for the planning, implementation, and training of staff in the use of technology in curricular and administrative functions;

(b) The continued development of a network to connect school districts, institutions of higher learning, and other sources of online information; and

(c) Methods to equitably increase the use of education technology by students and school personnel throughout the state.

(2) The superintendent of public instruction shall appoint an educational technology advisory committee to assist in the development and implementation of the technology plan in subsection (1) of this section. The committee shall include, but is not limited to, persons representing: The office of the chief information officer, educational service districts, school directors, school administrators, school principals, teachers, classified staff, higher education faculty, parents, students, business, labor, scientists and mathematicians, the higher education coordinating board, the workforce training and education coordinating board, and the state library.

(3) The plan adopted and implemented under this section may not impose on school districts any requirements that are not specifically required by federal law or regulation, including requirements to maintain eligibility for the federal schools and libraries program of the universal service fund. [2011 1st sp.s. c 43 § 725; 2009 c 556 § 17; 2006 c 263 § 917; 1995 c 335 § 507; 1994 c 245 § 2; 1993 c 336 § 703.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Additional notes found at www.leg.wa.gov

28A.650.015 Education technology plan—Educational technology advisory committee. (*Effective July 1, 2012.*) (1) The superintendent of public instruction, to the

[2011 RCW Supp—page 516]

extent funds are appropriated, shall develop and implement a Washington state K-12 education technology plan. The technology plan shall be updated on at least a biennial basis, shall be developed to coordinate and expand the use of education technology in the common schools of the state. The plan shall be consistent with applicable provisions of chapter 43.105 RCW. The plan, at a minimum, shall address:

(a) The provision of technical assistance to schools and school districts for the planning, implementation, and training of staff in the use of technology in curricular and administrative functions;

(b) The continued development of a network to connect school districts, institutions of higher learning, and other sources of online information; and

(c) Methods to equitably increase the use of education technology by students and school personnel throughout the state.

(2) The superintendent of public instruction shall appoint an educational technology advisory committee to assist in the development and implementation of the technology plan in subsection (1) of this section. The committee shall include, but is not limited to, persons representing: The office of the chief information officer, educational service districts, school directors, school administrators, school principals, teachers, classified staff, higher education faculty, parents, students, business, labor, scientists and mathematicians, the workforce training and education coordinating board, and the state library.

(3) The plan adopted and implemented under this section may not impose on school districts any requirements that are not specifically required by federal law or regulation, including requirements to maintain eligibility for the federal schools and libraries program of the universal service fund. [2011 1st sp.s. c 43 § 725; 2011 1st sp.s. c 11 § 133; 2009 c 556 § 17; 2006 c 263 § 917; 1995 c 335 § 507; 1994 c 245 § 2; 1993 c 336 § 703.]

Reviser's note: This section was amended by 2011 1st sp.s. c 11 § 133 and by 2011 1st sp.s. c 43 § 725, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Additional notes found at www.leg.wa.gov

Chapter 28A.655 RCW ACADEMIC ACHIEVEMENT AND ACCOUNTABILITY

Sections

- 28A.655.006 Condensed compliance reports—Second-class districts.
28A.655.061 High school assessment system—Certificate of academic achievement requirements—Exemptions—Options to retake high school assessment—Objective alternative assessment—Student learning plans.
28A.655.066 Statewide end-of-course assessments for high school mathematics—Use for Washington assessment of student learning.
28A.655.068 Statewide high school assessment in science.

- 28A.655.095 Students with cognitive disabilities—Alternative assessment system.
- 28A.655.180 Waivers for educational restructuring programs. (*Effective until June 30, 2019.*)
- 28A.655.220 Washington kindergarten inventory of developing skills—Fairness and bias review.

28A.655.006 Condensed compliance reports—Second-class districts. Any compliance reporting requirements as a result of laws in this chapter that apply to second-class districts may be submitted in accordance with RCW 28A.330.250. [2011 c 45 § 50.]

Conflict with federal requirements—2011 c 45: See note following RCW 28A.330.250.

28A.655.061 High school assessment system—Certificate of academic achievement requirements—Exemptions—Options to retake high school assessment—Objective alternative assessment—Student learning plans. (1) The high school assessment system shall include but need not be limited to the statewide student assessment, opportunities for a student to retake the content areas of the assessment in which the student was not successful, and, if approved by the legislature pursuant to subsection (10) of this section, one or more objective alternative assessments for a student to demonstrate achievement of state academic standards. The objective alternative assessments for each content area shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the statewide student assessment for each content area.

(2) Subject to the conditions in this section, a certificate of academic achievement shall be obtained by most students at about the age of sixteen, and is evidence that the students have successfully met the state standard in the content areas included in the certificate. With the exception of students satisfying the provisions of RCW 28A.155.045 or 28A.655.0611, acquisition of the certificate is required for graduation from a public high school but is not the only requirement for graduation.

(3) Beginning with the graduating class of 2008, with the exception of students satisfying the provisions of RCW 28A.155.045, a student who meets the state standards on the reading, writing, and mathematics content areas of the high school statewide student assessment shall earn a certificate of academic achievement. If a student does not successfully meet the state standards in one or more content areas required for the certificate of academic achievement, then the student may retake the assessment in the content area up to four times at no cost to the student. If the student successfully meets the state standards on a retake of the assessment then the student shall earn a certificate of academic achievement. Once objective alternative assessments are authorized pursuant to subsection (10) of this section, a student may use the objective alternative assessments to demonstrate that the student successfully meets the state standards for that content area if the student has taken the statewide student assessment at least once. If the student successfully meets the state standards on the objective alternative assessments then the student shall earn a certificate of academic achievement.

(4) Beginning with the graduating class of 2015, a student must meet the state standards in science in addition to the other content areas required under subsection (3) of this

section on the statewide student assessment or the objective alternative assessments in order to earn a certificate of academic achievement.

(5) The state board of education may not require the acquisition of the certificate of academic achievement for students in home-based instruction under chapter 28A.200 RCW, for students enrolled in private schools under chapter 28A.195 RCW, or for students satisfying the provisions of RCW 28A.155.045.

(6) A student may retain and use the highest result from each successfully completed content area of the high school assessment.

(7) School districts must make available to students the following options:

(a) To retake the statewide student assessment up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a public school; or

(b) To retake the statewide student assessment up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a high school completion program at a community or technical college. The superintendent of public instruction and the state board for community and technical colleges shall jointly identify means by which students in these programs can be assessed.

(8) Students who achieve the standard in a content area of the high school assessment but who wish to improve their results shall pay for retaking the assessment, using a uniform cost determined by the superintendent of public instruction.

(9) Opportunities to retake the assessment at least twice a year shall be available to each school district.

(10)(a) The office of the superintendent of public instruction shall develop options for implementing objective alternative assessments, which may include an appeals process for students' scores, for students to demonstrate achievement of the state academic standards. The objective alternative assessments shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the statewide student assessment and be objective in its determination of student achievement of the state standards. Before any objective alternative assessments in addition to those authorized in RCW 28A.655.065 or (b) of this subsection are used by a student to demonstrate that the student has met the state standards in a content area required to obtain a certificate, the legislature shall formally approve the use of any objective alternative assessments through the omnibus appropriations act or by statute or concurrent resolution.

(b)(i) A student's score on the mathematics, reading or English, or writing portion of the SAT or the ACT may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the state standards for the certificate of academic achievement. The state board of education shall identify the scores students must achieve on the relevant portion of the SAT or ACT to meet or exceed the state standard in the relevant content area on the statewide student assessment. A student's score on the science portion of the ACT or the science subject area tests of the SAT may be used as an objective alternative assessment under this section as soon as the state board of education determines that sufficient data is available to identify reliable equivalent scores for the science content area of the statewide

student assessment. After the first scores are established, the state board may increase but not decrease the scores required for students to meet or exceed the state standards.

(ii) A student who scores at least a three on the grading scale of one to five for selected AP examinations may use the score as an objective alternative assessment under this section for demonstrating that a student has met or exceeded state standards for the certificate of academic achievement. A score of three on the AP examinations in calculus or statistics may be used as an alternative assessment for the mathematics portion of the statewide student assessment. A score of three on the AP examinations in English language and composition may be used as an alternative assessment for the writing portion of the statewide student assessment. A score of three on the AP examinations in English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics may be used as an alternative assessment for the reading portion of the statewide student assessment. A score of three on the AP examination in biology, physics, chemistry, or environmental science may be used as an alternative assessment for the science portion of the statewide student assessment.

(11) By December 15, 2004, the house of representatives and senate education committees shall obtain information and conclusions from recognized, independent, national assessment experts regarding the validity and reliability of the high school Washington assessment of student learning for making individual student high school graduation determinations.

(12) To help assure continued progress in academic achievement as a foundation for high school graduation and to assure that students are on track for high school graduation, each school district shall prepare plans for and notify students and their parents or legal guardians as provided in this subsection. Student learning plans are required for eighth grade students who were not successful on any or all of the content areas of the state assessment during the previous school year or who may not be on track to graduate due to credit deficiencies or absences. The parent or legal guardian shall be notified about the information in the student learning plan, preferably through a parent conference and at least annually. To the extent feasible, schools serving English language learner students and their parents shall translate the plan into the primary language of the family. The plan shall include the following information as applicable:

- (a) The student's results on the state assessment;
- (b) If the student is in the transitional bilingual program, the score on his or her Washington language proficiency test II;
- (c) Any credit deficiencies;
- (d) The student's attendance rates over the previous two years;
- (e) The student's progress toward meeting state and local graduation requirements;
- (f) The courses, competencies, and other steps needed to be taken by the student to meet state academic standards and stay on track for graduation;
- (g) Remediation strategies and alternative education options available to students, including informing students of

the option to continue to receive instructional services after grade twelve or until the age of twenty-one;

(h) The alternative assessment options available to students under this section and RCW 28A.655.065;

(i) School district programs, high school courses, and career and technical education options available for students to meet graduation requirements; and

(j) Available programs offered through skill centers or community and technical colleges, including the college high school diploma options under RCW 28B.50.535. [2011 1st sp.s. c 22 § 2; 2010 c 244 § 1; 2009 c 524 § 5; 2008 c 321 § 2. Prior: 2007 c 355 § 5; 2007 c 354 § 2; 2006 c 115 § 4; 2004 c 19 § 101.]

Finding—Intent—2011 1st sp.s. c 22: "(1) The legislature continues to support end-of-course assessments as a fair and practical way to measure students' knowledge and skills in high school science, but the legislature also recognizes that there are important scientific concepts, principles, and content that are not able to be captured in a single course or a single assessment. The legislature also does not wish to narrow the high school science curriculum to a singular focus on biology.

(2) However, the legislature finds that the financial resources for developing additional end-of-course assessments for high school science are not available in the 2011-2013 biennium. Nevertheless, the legislature intends to revisit this issue in the future and further intends at an appropriate time to direct the superintendent of public instruction to develop one or more end-of-course assessments in additional science subjects." [2011 1st sp.s. c 22 § 1.]

Intent—2009 c 524: See note following RCW 28B.50.535.

Findings—2008 c 321: "The legislature finds that high school students need to graduate with the skills necessary to be successful in college and work. The state graduation requirements help to ensure that Washington high school graduates have the basic skills to be competitive in a global economy. Under education reform started in 1993, time was to be the variable, obtaining the skills was to be the constant. Therefore, students who need additional time to gain the academic skills needed for college and the workplace should have the opportunities they need to reach high academic achievement, even if that takes more than the standard four years of high school.

Different students face different challenges and barriers to their academic success. Some students struggle to meet the standard on a single portion of the Washington assessment of student learning while excelling in the other subject areas; other students struggle to complete the necessary state or local graduation credits; while still others have their knowledge tested on the assessments and have completed all the credit requirements but are struggling because English is not their first language. The legislature finds that many of these students need additional time and support to achieve academic proficiency and meet all graduation requirements." [2008 c 321 § 1.]

Finding—Intent—2007 c 355: See note following RCW 28B.50.534.

Findings—Intent—2007 c 354: "(1) The legislature maintains a strong commitment to high expectations and high academic achievement for all students. The legislature finds that Washington schools and students are making significant progress in improving achievement in reading and writing. Schools are adapting instruction and providing remediation for students who need additional assistance. Reading and writing are being taught across the curriculum. Therefore, the legislature does not intend to make changes to the Washington assessment of student learning or high school graduation requirements in reading and writing.

(2) However, students are having difficulty improving their academic achievement in mathematics and science, particularly as measured by the high school Washington assessment of student learning. The legislature finds that corrections are needed in the state's high school assessment system that will improve alignment between learning standards, instruction, diagnosis, and assessment of students' knowledge and skills in high school mathematics and science. The legislature further finds there is a sense of urgency to make these corrections and intends to revise high school graduation requirements in mathematics and science only for the minimum period for corrections to be fully implemented." [2007 c 354 § 1.]

Part headings and captions not law—2004 c 19: "Part headings and captions used in this act are not any part of the law." [2004 c 19 § 301.]

Severability—2004 c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the

application of the provision to other persons or circumstances is not affected." [2004 c 19 § 302.]

Effective date—2004 c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 2004]." [2004 c 19 § 303.]

28A.655.066 Statewide end-of-course assessments for high school mathematics—Use for Washington assessment of student learning. (1)(a) In consultation with the state board of education, the superintendent of public instruction shall develop statewide end-of-course assessments for high school mathematics that measure student achievement of the state mathematics standards. The superintendent shall take steps to ensure that the language of the assessments is responsive to a diverse student population. The assessments shall be implemented statewide in the 2010-11 school year.

(b) The superintendent shall develop end-of-course assessments for the first year of high school mathematics that include the standards common to algebra I and integrated mathematics I and for the second year of high school mathematics that include the standards common to geometry and integrated mathematics II. The assessments under this subsection (1)(b) shall be used to demonstrate that a student meets the state standard on the mathematics content area of the high school Washington assessment of student learning for purposes of RCW 28A.655.061.

(c) The superintendent of public instruction shall also develop subtests for the end-of-course assessments that measure standards for the first two years of high school mathematics that are unique to algebra I, integrated mathematics I, geometry, and integrated mathematics II. The results of the subtests shall be reported at the student, teacher, school, and district level.

(2) For the graduating classes of 2013 and 2014 and for purposes of the certificate of academic achievement under RCW 28A.655.061, a student may use: (a) Results from the end-of-course assessment for the first year of high school mathematics or the results from the end-of-course assessment for the second year of high school mathematics; or (b) results from a high school mathematics retake assessment.

(3) Beginning with the graduating class of 2015 and for purposes of the certificate of academic achievement under RCW 28A.655.061, the mathematics content area of the Washington assessment of student learning shall be assessed using the end-of-course assessment for the first year of high school mathematics plus the end-of-course assessment for the second year of high school mathematics, or results from a high school mathematics retake assessment for the end-of-course assessments in which the student did not meet the standard.

(4) All of the objective alternative assessments available to students under RCW 28A.655.061 and 28A.655.065 shall be available to any student who has taken the sequence of end-of-course assessments once but does not meet the state mathematics standard on the sequence of end-of-course assessments.

(5) The superintendent of public instruction shall report at least annually or more often if necessary to keep the education committees of the legislature informed on each step of

the development and implementation process under this section. [2011 c 25 § 2; 2009 c 310 § 3; 2008 c 163 § 3.]

Findings—Intent—2011 c 25: "The legislature finds that acquiring mathematical skills and knowledge is critical for the future financial and personal success of public school graduates. However, the legislature finds that requiring students in the classes of 2013 and 2014 to meet the standards on two high school mathematics end-of-course assessments to graduate would not be fair to students or a valid use of the new end-of-course assessments. Specifically, a majority of these students will have taken algebra I or integrated mathematics one or more years before taking the end-of-course assessments. In addition, teachers need more time to incorporate the new 2008 mathematics standards into their instruction to properly prepare students for the new assessment requirements. Instead, the legislature intends to provide a reasonable transition period and require students in the classes of 2013 and 2014 to meet the standard on only one assessment. Students in subsequent classes will be required to meet the standards on both assessments." [2011 c 25 § 1.]

Findings—2008 c 163: "The legislature finds that, according to a recent report from a consultant retained by the state board of education, end-of-course assessments have certain advantages over comprehensive assessments such as the current form of the Washington assessment of student learning, and in most other areas end-of-course assessments are comparable to comprehensive assessments in meeting public policy objectives for a statewide assessment system. The legislature further finds that because the state's assessment contract will be renegotiated before the end of 2008, the 2008 legislature has an opportunity to provide policy direction in the design of the state assessment system and the design of the Washington assessment of student learning." [2008 c 163 § 1.]

28A.655.068 Statewide high school assessment in science. (1) Beginning in the 2011-12 school year, the statewide high school assessment in science shall be an end-of-course assessment for biology that measures the state standards for life sciences, in addition to systems, inquiry, and application as they pertain to life sciences.

(2) The superintendent of public instruction may develop science end-of-course assessments in subjects in addition to biology for purposes of RCW 28A.655.061, when so directed by the legislature.

(3) The superintendent of public instruction may participate with consortia of multiple states as common student learning standards and assessments in science are developed. The superintendent of public instruction, in consultation with the state board of education, may modify the essential academic learning requirements and statewide student assessments in science, including the high school assessment, according to the multistate common student learning standards and assessments as long as the education committees of the legislature have opportunities for review before the modifications are adopted, as provided under RCW 28A.655.070.

(4) The statewide high school assessment under this section shall be used to demonstrate that a student meets the state standards in the science content area of the statewide student assessment for purposes of RCW 28A.655.061. [2011 1st sp.s. c 22 § 3.]

Finding—Intent—2011 1st sp.s. c 22: See note following RCW 28A.655.061.

28A.655.095 Students with cognitive disabilities—Alternative assessment system. The office of the superintendent of public instruction shall continue to actively collaborate with teachers and directors of special education programs in the development and implementation of a process to transition from the current portfolio system of assessment of students with significant cognitive challenges to a perfor-

mance task-based alternative assessment system based on state standards. Before such time as a new assessment becomes available, and within existing resources, the office of the superintendent of public instruction shall coordinate efforts to: Align academic goals in a student's individualized education program with the current statewide assessment system by identifying detailed statewide alternate achievement benchmarks for use by teachers in the current portfolio system; develop a transparent and reliable scoring process; efficiently use technology; and develop a sensible approval process to shorten the time involved in developing and collecting current assessment data for students with significant cognitive disabilities. [2011 c 75 § 2.]

Findings—2011 c 75: "The legislature finds that:

(1) One of the difficult issues facing states and school districts throughout the country is the meaningful inclusion of students with significant cognitive challenges in their current state assessment and accountability systems.

(2) Assessment and accountability systems provide valuable information to parents and educators, and all students deserve a system that encourages them to meaningfully access and make progress in the general education curriculum. Nevertheless, assessing the academic knowledge and skills of students with unique and significant cognitive disabilities can be challenging concerning the student's access to and progress in the general education curriculum. Furthermore, the development of meaningful assessment portfolios in the current system can be extremely time-consuming for both teachers and students, provide limited information for parents, and include questionable test and measurement practices." [2011 c 75 § 1.]

28A.655.180 Waivers for educational restructuring programs. (Effective until June 30, 2019.) (1) The state board of education, where appropriate, or the superintendent of public instruction, where appropriate, may grant waivers to districts from the provisions of statutes or rules relating to: The length of the school year; student-to-teacher ratios; and other administrative rules that in the opinion of the state board of education or the opinion of the superintendent of public instruction may need to be waived in order for a district to implement a plan for restructuring its educational program or the educational program of individual schools within the district or to implement an innovation school or innovation zone designated under RCW 28A.630.081.

(2) School districts may use the application process in RCW 28A.305.140 to apply for the waivers under this section. [2011 c 260 § 9; 2009 c 543 § 3; 1995 c 208 § 1; (1997 c 431 § 23 expired June 30, 1999). Formerly RCW 28A.630.945.]

Findings—Intent—2011 c 260: See note following RCW 28A.630.080.

Expiration date—2011 c 260: See RCW 28A.630.089.

Finding—Intent—2009 c 543: See note following RCW 28A.305.141.

28A.655.220 Washington kindergarten inventory of developing skills—Fairness and bias review. Before implementing the Washington kindergarten inventory of developing skills as provided under RCW 28A.150.315, the superintendent of public instruction and the department of early learning must assure that a fairness and bias review of the assessment process has been conducted, including providing an opportunity for input from the *achievement gap oversight and accountability committee under RCW 28A.300.136 and from an additional diverse group of community representatives, parents, and educators to be con-

[2011 RCW Supp—page 520]

vened by the superintendent and the director of the department. [2011 c 340 § 2.]

***Reviser's note:** The achievement gap oversight and accountability committee was renamed the educational opportunity gap oversight and accountability committee by 2011 1st sp.s. c 21 § 33.

Chapter 28A.660 RCW ALTERNATIVE ROUTE TEACHER CERTIFICATION

Sections

28A.660.050 Conditional scholarship programs—Requirements—Recipients. (*Effective July 1, 2012.*)

28A.660.050 Conditional scholarship programs—Requirements—Recipients. (Effective July 1, 2012.) Subject to the availability of amounts appropriated for these purposes, the conditional scholarship programs in this chapter are created under the following guidelines:

(1) The programs shall be administered by the office of student financial assistance. In administering the programs, the office has the following powers and duties:

(a) To adopt necessary rules and develop guidelines to administer the programs;

(b) To collect and manage repayments from participants who do not meet their service obligations; and

(c) To accept grants and donations from public and private sources for the programs.

(2) Requirements for participation in the conditional scholarship programs are as provided in this subsection (2).

(a) The alternative route conditional scholarship program is limited to interns of professional educator standards board-approved alternative routes to teaching programs under RCW 28A.660.040. For fiscal year 2011, priority must be given to fiscal year 2010 participants in the alternative route partnership program. In order to receive conditional scholarship awards, recipients shall:

(i) Be accepted and maintain enrollment in alternative certification routes through a professional educator standards board-approved program;

(ii) Continue to make satisfactory progress toward completion of the alternative route certification program and receipt of a residency teaching certificate; and

(iii) Receive no more than the annual amount of the scholarship, not to exceed eight thousand dollars, for the cost of tuition, fees, and educational expenses, including books, supplies, and transportation for the alternative route certification program in which the recipient is enrolled. The *board may adjust the annual award by the average rate of resident undergraduate tuition and fee increases at the state universities as defined in RCW 28B.10.016.

(b) The pipeline for paraeducators conditional scholarship program is limited to qualified paraeducators as provided by RCW 28A.660.042. In order to receive conditional scholarship awards, recipients shall:

(i) Be accepted and maintain enrollment at a community and technical college for no more than two years and attain an associate of arts degree;

(ii) Continue to make satisfactory progress toward completion of an associate of arts degree. This progress requirement is a condition for eligibility into a route one program of

the alternative routes to teacher certification program for a mathematics, special education, or English as a second language endorsement; and

(iii) Receive no more than the annual amount of the scholarship, not to exceed four thousand dollars, for the cost of tuition, fees, and educational expenses, including books, supplies, and transportation for the alternative route certification program in which the recipient is enrolled. The *board may adjust the annual award by the average rate of tuition and fee increases at the state community and technical colleges.

(c) The retooling to teach mathematics and science conditional scholarship program is limited to current K-12 teachers. In order to receive conditional scholarship awards:

(i) Individuals currently employed as teachers shall pursue a middle level mathematics or science, or secondary mathematics or science endorsement; or

(ii) Individuals who are certificated with an elementary education endorsement shall pursue an endorsement in middle level mathematics or science, or both; and

(iii) Individuals shall use one of the pathways to endorsement processes to receive a mathematics or science endorsement, or both, which shall include passing a mathematics or science endorsement test, or both tests, plus observation and completing applicable coursework to attain the proper endorsement; and

(iv) Individuals shall receive no more than the annual amount of the scholarship, not to exceed three thousand dollars, for the cost of tuition, test fees, and educational expenses, including books, supplies, and transportation for the endorsement pathway being pursued.

(3) The Washington professional educator standards board shall select individuals to receive conditional scholarships. In selecting recipients, preference shall be given to eligible veterans or national guard members.

(4) For the purpose of this chapter, a conditional scholarship is a loan that is forgiven in whole or in part in exchange for service as a certificated teacher employed in a Washington state K-12 public school. The state shall forgive one year of loan obligation for every two years a recipient teaches in a public school. Recipients who fail to continue a course of study leading to residency teacher certification or cease to teach in a public school in the state of Washington in their endorsement area are required to repay the remaining loan principal with interest.

(5) Recipients who fail to fulfill the required teaching obligation are required to repay the remaining loan principal with interest and any other applicable fees. The office of student financial assistance shall adopt rules to define the terms for repayment, including applicable interest rates, fees, and deferments.

(6) The office of student financial assistance may deposit all appropriations, collections, and any other funds received for the program in this chapter in the future teachers conditional scholarship account authorized in RCW 28B.102.080. [2011 1st sp.s. c 11 § 134; 2010 c 235 § 505. Prior: 2009 c 539 § 3; 2009 c 192 § 2; 2007 c 396 § 8; 2004 c 23 § 5; 2003 c 410 § 3; 2001 c 158 § 6.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating

board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Finding—2010 c 235: See note following RCW 28A.405.245.

Effective date—2009 c 539: See note following RCW 28A.655.200.

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Title 28B

HIGHER EDUCATION

Chapters

- 28B.04** Displaced homemaker act.
28B.07 Washington higher education facilities authority.
28B.10 Colleges and universities generally.
28B.12 State work-study program.
28B.14D 1979 bond issue for capital improvements.
28B.14G 1981 bond issue for capital improvements (1981 c 233).
28B.15 College and university fees.
28B.20 University of Washington.
28B.30 Washington State University.
28B.31 1977 Washington State University buildings and facilities financing act.
28B.35 Regional universities.
28B.38 Spokane intercollegiate research and technology institute.
28B.40 The Evergreen State College.
28B.45 Branch campuses.
28B.50 Community and technical colleges.
28B.67 Customized employment training.
28B.76 Higher education coordinating board.
28B.77 Council for higher education.
28B.92 State student financial aid programs.
28B.95 Advanced college tuition payment program.
28B.97 Washington higher education loan program.
28B.102 Future teachers conditional scholarship and loan repayment program.
28B.105 GET ready for math and science scholarship program.
28B.106 College savings bond program.
28B.108 American Indian endowed scholarship program.
28B.109 Washington international exchange scholarship program.
28B.110 Gender equality in higher education.
28B.115 Health professional conditional scholarship program.
28B.116 Foster care endowed scholarship program.
28B.117 Passport to college promise program.
28B.118 College bound scholarship program.
28B.119 Washington promise scholarship program.
28B.120 Washington fund for innovation and quality in higher education program.
28B.122 Aerospace training student loan program.
28B.133 Gaining independence for students with dependents program.
28B.135 Child care for higher education students.
28B.145 Opportunity scholarship act.

Chapter 28B.04 RCW

DISPLACED HOMEMAKER ACT

Sections

28B.04.080 Consultation and cooperation with other agencies—Agency report of available services and funds therefor—Board as clearinghouse for information and resources. (*Effective July 1, 2012.*)

28B.04.080 Consultation and cooperation with other agencies—Agency report of available services and funds therefor—Board as clearinghouse for information and resources. (*Effective July 1, 2012.*) (1) The board shall consult and cooperate with the department of social and health services; the superintendent of public instruction; the workforce training and education coordinating board; the employment security department; the department of labor and industries; sponsoring agencies under the federal comprehensive employment and training act (87 Stat. 839; 29 U.S.C. Sec. 801 et seq.), and any other persons or agencies as the board deems appropriate to facilitate the coordination of centers established under this chapter with existing programs of a similar nature.

(2) Annually on July 1st, each agency listed in subsection (1) of this section shall submit a description of each service or program under its jurisdiction which would support the programs and centers established by this chapter and the funds available for such support.

(3) The board shall serve as a clearinghouse for displaced homemaker information and resources and shall compile and disseminate statewide information to the centers, related agencies, and interested persons upon request. [2011 1st sp.s. c 11 § 135; 2004 c 275 § 31; 1985 c 370 § 42; 1982 1st ex.s. c 15 § 6; 1979 c 73 § 8.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—2004 c 275 §§ 28-32: See note following RCW 28B.04.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Chapter 28B.07 RCW

WASHINGTON HIGHER EDUCATION FACILITIES AUTHORITY

Sections

28B.07.020 Definitions. (*Effective July 1, 2012.*)

28B.07.030 Washington higher education facilities authority—Created—Members—Chairperson—Records—Quorum—Compensation and travel expenses. (*Effective July 1, 2012.*)

28B.07.020 Definitions. (*Effective July 1, 2012.*) As used in this chapter, the following words and terms shall have the following meanings, unless the context otherwise requires:

(1) "Authority" means the Washington higher education facilities authority created under RCW 28B.07.030 or any board, body, commission, department or officer succeeding to the principal functions of the authority or to whom the powers conferred upon the authority shall be given by law.

(2) "Bonds" means bonds, notes, commercial paper, certificates of indebtedness, or other evidences of indebtedness of the authority issued under this chapter.

(3) "Bond resolution" means any resolution of the authority, adopted under this chapter, authorizing the issuance and sale of bonds.

(4) "Higher education institution" means a private, non-profit educational institution, the main campus of which is permanently situated in the state, which is open to residents of the state, which neither restricts entry on racial or religious grounds, which provides programs of education beyond high school leading at least to the baccalaureate degree, and which is accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the council for higher education.

(5) "Participant" means a higher education institution which, under this chapter, undertakes the financing of a project or projects or undertakes the refunding or refinancing of obligations, mortgages, or advances previously incurred for a project or projects.

(6) "Project" means any land or any improvement, including, but not limited to, buildings, structures, fixtures, utilities, machinery, excavations, paving, and landscaping, and any interest in such land or improvements, and any personal property pertaining or useful to such land and improvements, which are necessary, useful, or convenient for the operation of a higher education institution, including but not limited to, the following: Dormitories or other multi-unit housing facilities for students, faculty, officers, or employees; dining halls; student unions; administration buildings; academic buildings; libraries; laboratories; research facilities; computer facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or utility facilities; parking facilities; or any combination thereof, or any other structures, facilities, or equipment so related.

(7) "Project cost" means any cost related to the acquisition, construction, improvement, alteration, or rehabilitation by a participant or the authority of any project and the financing of the project through the authority, including, but not limited to, the following costs paid or incurred: Costs of acquisition of land or interests in land and any improvement; costs of contractors, builders, laborers, material suppliers, and suppliers of tools and equipment; costs of surety and performance bonds; fees and disbursements of architects, surveyors, engineers, feasibility consultants, accountants, attorneys, financial consultants, and other professionals; interest on bonds issued by the authority during any period of construction; principal of and interest on interim financing of any project; debt service reserve funds; depreciation funds, costs of the initial start-up operation of any project; fees for title insurance, document recording, or filing; fees of trustees and the authority; taxes and other governmental charges levied or assessed on any project; and any other similar costs. Except as specifically set forth in this definition, the term "project cost" does not include books, fuel, supplies, and similar items which are required to be treated as a current expense under generally accepted accounting principles.

(8) "Trust indenture" means any agreement, trust indenture, or other similar instrument by and between the authority and one or more corporate trustees. [2011 1st sp.s. c 11 § 136; 2007 c 218 § 86; 1985 c 370 § 47; 1983 c 169 § 2.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

28B.07.030 Washington higher education facilities authority—Created—Members—Chairperson—Records—Quorum—Compensation and travel expenses. (Effective July 1, 2012.) (1) The Washington higher education facilities authority is hereby established as a public body corporate and politic, with perpetual corporate succession, constituting an agency of the state of Washington exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010.

(2) The authority shall consist of six members as follows: The governor, lieutenant governor, and four public members, one of whom shall be the president of a higher education institution at the time of appointment. The public members shall be residents of the state and appointed by the governor, subject to confirmation by the senate, on the basis of their interest or expertise in the provision of higher education and the financing of higher education. The public members of the authority shall serve for terms of four years. The initial terms of the public members shall be staggered in a manner determined by the governor. In the event of a vacancy on the authority due to death, resignation, or removal of one of the public members, and upon the expiration of the term of any public member, the governor shall appoint a successor for a term expiring on the fourth anniversary of the successor's date of the appointment. If any of the state offices are abolished, the resulting vacancy on the authority shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office. Any public member of the authority may be removed by the governor for misfeasance, malfeasance, willful neglect of duty, or any other cause after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing.

(3) The governor shall serve as chairperson of the authority. The authority shall elect annually one of its members as secretary. If the governor shall be absent from a meeting of the authority, the secretary shall preside. However, the governor may designate an employee of the governor's office to act on the governor's behalf in all other respects during the absence of the governor at any meeting of the authority. If the designation is in writing and is presented to the person presiding at the meetings of the authority who is included in the designation, the vote of the designee has the same effect as if cast by the governor.

(4) Any person designated by resolution of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents, and papers filed with the authority, the minute book or a journal of the authority, and the authority's official seal, if any. The person may cause copies to be made of all minutes and other records and documents of the authority, and may give certificates to the effect that such copies are true copies. All persons dealing with the authority may rely upon the certificates.

(5) Four members of the authority constitute a quorum. Members participating in a meeting through the use of any means of communication by which all members participating

can hear each other during the meeting shall be deemed to be present in person at the meeting for all purposes. The authority may act on the basis of a motion except when authorizing the issuance and sale of bonds, in which case the authority shall act by resolution. Bond resolutions and other resolutions shall be adopted upon the affirmative vote of four members of the authority, and shall be signed by those members voting yes. Motions shall be adopted upon the affirmative vote of a majority of a quorum of members present at any meeting of the authority. All actions taken by the authority shall take effect immediately without need for publication or other public notice. A vacancy in the membership of the authority does not impair the power of the authority to act under this chapter.

(6) The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses as determined by the authority incurred in the discharge of their duties under this chapter. [2011 1st sp.s. c 11 § 137; 2007 c 36 § 14; 1985 c 370 § 48; 1984 c 287 § 62; 1983 c 169 § 3.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

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

Chapter 28B.10 RCW

COLLEGES AND UNIVERSITIES GENERALLY

Sections	
28B.10.029	Property purchase and disposition—Independent printing production and purchasing authority—Purchase of correctional industries products.
28B.10.053	Postsecondary credit for high school coursework—Master list of qualifying courses and qualifying examination scores—Dissemination of information.
28B.10.056	Repealed.
28B.10.118	Accelerated baccalaureate degree programs—Approval.
28B.10.310	Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College—Bonds—Sale, interest, form, payment, term, execution, negotiability, etc.
28B.10.400	Annuities and retirement income plans—Authorized.
28B.10.405	Annuities and retirement income plans—Contributions by faculty and employees.
28B.10.410	Annuities and retirement income plans—Limitation on institution's contribution.
28B.10.415	Annuities and retirement income plans—Limitation on annuity or retirement income plan payment.
28B.10.417	Annuities and retirement income plans—Rights and duties of faculty or employees with Washington state teachers' retirement system credit—Regional universities and The Evergreen State College.
28B.10.423	Annuities and retirement income plans—Limit on retirement income—Adjustment of rates—Limitation of state funding—Actuarial valuation of supplemental benefit plans—Higher education retirement plan supplemental benefit fund.
28B.10.430	Annuities and retirement income plans—Minimum monthly benefit—Computation.
28B.10.510	Attorney general as advisor.
28B.10.520	Regents and trustees—Oaths.
28B.10.528	Delegation of powers and duties by governing boards.
28B.10.567	Police forces for universities and The Evergreen State College—Benefits for duty-related death, disability or injury.
28B.10.5691	Repealed.
28B.10.696	Transfer students' credit—List of academic courses equivalent to one year of general education credit—One-year academic completion certificate—Arts and sciences

- degrees for students entering with junior status—Publication of recommended courses by academic major for transfer students.
- 28B.10.786 Budget calculation—Student financial aid programs. (*Effective July 1, 2012.*)
- 28B.10.790 State student financial aid program—Certain residents attending college or university in another state, applicability to—Authorization. (*Effective July 1, 2012.*)
- 28B.10.792 State student financial aid program—Certain residents attending college or university in another state, applicability to—Guidelines. (*Effective July 1, 2012.*)
- 28B.10.840 Definitions for purposes of RCW 28B.10.840 through 28B.10.844. (*Effective July 1, 2012.*)
- 28B.10.844 Regents, trustees, officers, employees, or agents of institutions of higher education or educational boards, insurance to protect and hold personally harmless.
- 28B.10.916 Supplemental instructional materials for students with print access disability.
- 28B.10.920 Repealed.
- 28B.10.921 Repealed.
- 28B.10.922 Repealed.
- 28B.10.924 Aviation biofuel demonstration project—Income from commercialization of patents, copyrights, proprietary processes, or licenses—Deposit of proportionate percentage of income.

28B.10.029 Property purchase and disposition—Independent printing production and purchasing authority—Purchase of correctional industries products. (1)(a) An institution of higher education may exercise independently those powers otherwise granted to the director of enterprise services in chapter 43.19 RCW in connection with the purchase and disposition of all material, supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education.

(b) Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of enterprise services.

(c) Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917, 43.19.1937, 43.19.685, 43.19.700 through 43.19.704, and 43.19.560 through 43.19.637.

(d) Purchases under chapter 39.29, 43.19, or 43.105 RCW by institutions of higher education may be made by using contracts for materials, supplies, services, or equipment negotiated or entered into by, for, or through group purchasing organizations.

(e) The community and technical colleges shall comply with RCW 43.19.450.

(f) Except for the University of Washington, institutions of higher education shall comply with RCW 43.19.769, 43.19.763, and 43.19.781.

(g) If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685 and 43.19.637.

(h) Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of enterprise services. Thereafter the director of enterprise services shall not be required to provide those services for that institution for the duration of the enterprise services contract term for that commodity or group of commodities.

(2) The council of presidents and the state board for community and technical colleges shall convene its correctional industries business development advisory committee, and work collaboratively with correctional industries, to:

(a) Reaffirm purchasing criteria and ensure that quality, service, and timely delivery result in the best value for expenditure of state dollars;

(b) Update the approved list of correctional industries products from which higher education shall purchase; and

(c) Develop recommendations on ways to continue to build correctional industries' business with institutions of higher education.

(3) Higher education and correctional industries shall develop a plan to build higher education business with correctional industries to increase higher education purchases of correctional industries products, based upon the criteria established in subsection (2) of this section. The plan shall include the correctional industries' production and sales goals for higher education and an approved list of products from which higher education institutions shall purchase, based on the criteria established in subsection (2) of this section. Higher education and correctional industries shall report to the legislature regarding the plan and its implementation no later than January 30, 2005.

(4)(a) Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2006, to purchase one percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections. Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2008, to purchase two percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(b) Institutions of higher education shall endeavor to assure the department of corrections has notifications of bid opportunities with the goal of meeting or exceeding the purchasing target in (a) of this subsection. [2011 1st sp.s. c 43 § 303; 2011 c 198 § 1; 2010 c 61 § 1; 2004 c 167 § 10. Prior: 1998 c 344 § 5; 1998 c 111 § 2; 1996 c 110 § 5; 1993 c 379 § 101.]

Reviser's note: This section was amended by 2011 c 198 § 1 and by 2011 1st sp.s. c 43 § 303, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Findings—1998 c 344: See note following RCW 28B.38.010.

Intent—1993 c 379: "The legislature acknowledges the academic freedom of institutions of higher education, and seeks to improve their efficiency and effectiveness in carrying out their missions. By this act, the legislature intends to increase the flexibility of institutions of higher education to manage personnel, construction, purchasing, printing, and tuition." [1993 c 379 § 1.]

Additional notes found at www.leg.wa.gov

28B.10.053 Postsecondary credit for high school coursework—Master list of qualifying courses and qualifying examination scores—Dissemination of information. (1) By December 1, 2011, and by June of each odd-numbered year thereafter, the institutions of higher education shall col-

laboratively develop a master list of postsecondary courses that can be fulfilled by taking the advanced placement, international baccalaureate, or other recognized college-level proficiency examinations and meeting the qualifying examination score or demonstrated competencies for lower division general education requirements or postsecondary professional technical requirements. The master list of postsecondary courses fulfilled by proficiency examinations or demonstrated competencies are those that fulfill lower division general education requirements or career and technical education requirements and qualify for postsecondary credit. From the master list, each institution shall create and publish a list of its courses that can be satisfied by successful proficiency examination scores or demonstrated competencies for lower division general education requirements or postsecondary professional technical requirements. The qualifying examination scores and demonstrated competencies shall be included in the published list. The requirements to develop a master list under this section do not apply if an institution has a clearly published policy of awarding credit for the advanced placement, international baccalaureate, or other recognized college-level placement exams and does not require those credits to meet specific course requirements but generally applies those credits towards degree requirements.

(2) To the maximum extent possible, institutions of higher education shall agree on examination qualifying scores and demonstrated competencies for the credits or courses under subsection (3) of this section, with scores equivalent to qualified or well-qualified. Nothing in this subsection shall prevent an institution of higher education from adopting policies using higher scores for additional purposes.

(3) Each institution of higher education, in designing its certificate, technical degree program, two-year academic transfer program, or freshman and sophomore courses of a baccalaureate program or baccalaureate degree, must recognize the equivalencies of at least one year of course credit and maximize the application of the credits toward lower division general education requirements that can be earned through successfully demonstrating proficiency on examinations, including but not limited to advanced placement and international baccalaureate examinations. The successful completion of the examination and the award of credit shall be noted on the student's college transcript.

(4) Each institution of higher education must clearly include in its admissions materials and on its web site the credits or the institution's list of postsecondary courses that can be fulfilled by proficiency examinations or demonstrated competencies and the agreed-upon examination scores and demonstrated competencies that qualify for postsecondary credit. Each institution must provide the information to the higher education coordinating board and state board for community and technical colleges in a form that the superintendent of public instruction is able to distribute to school districts. [2011 c 77 § 3.]

Findings—Intent—Short title—2011 c 77: See notes following RCW 28A.230.130.

28B.10.056 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.10.118 Accelerated baccalaureate degree programs—Approval. (1) State universities, regional universities, and The Evergreen State College may develop accelerated baccalaureate degree programs that will allow academically qualified students to obtain a baccalaureate degree in three years without attending summer classes or enrolling in more than a full-time class load during the regular academic year. The programs must allow academically qualified students to begin coursework within their academic field during their first term or semester of enrollment.

(2) The state universities, regional universities, and The Evergreen State College shall report on their plans for the accelerated baccalaureate degree programs to the higher education coordinating board for approval. [2011 c 108 § 2.]

Findings—Intent—2011 c 108: "The legislature finds that some students are eager to complete a degree in the shortest time possible in order to enter the job market. The legislature further finds that providing a streamlined path to a baccalaureate degree would shorten the time required for students to complete a degree, improve the graduation rate, and improve accessibility for students who have proven academic abilities. The legislature intends to provide an accelerated baccalaureate degree program that will allow academically qualified students to obtain baccalaureate degrees in three years. The legislature finds that this streamlined path does not represent a new three-year standard for all students. The legislature intends to provide greater options to students, while not diminishing the quality or value of a standard baccalaureate degree. Further, the legislature intends that baccalaureate institutions explore reasonable possibilities for accelerated degree programs for academically qualified students." [2011 c 108 § 1.]

28B.10.310 Acquisition, construction, equipping and betterment of lands, buildings and facilities at universities and The Evergreen State College—Bonds—Sale, interest, form, payment, term, execution, negotiability, etc. Each issue or series of such bonds: Shall be sold at such price and at such rate or rates of interest; may be serial or term bonds; may mature at such time or times in not to exceed forty years from date of issue; may be sold at public or private sale; may be payable both principal and interest at such place or places; may be subject to redemption prior to any fixed maturities; may be in such denominations; may be payable to bearer or to the purchaser or purchasers thereof or may be registrable as to principal or principal and interest as provided in RCW 39.46.030; may be issued under and subject to such terms, conditions, and covenants providing for the payment of the principal thereof and interest thereon, which may include the creation and maintenance of a reserve fund or account to secure the payment of such principal and interest and a provision that additional bonds payable out of the same source or sources may later be issued on a parity therewith, and such other terms, conditions, covenants, and protective provisions safeguarding such payment, all as determined and found necessary and desirable by said boards of regents or trustees. If found reasonably necessary and advisable, such boards of regents or trustees may select a trustee for the owners of each such issue or series of bonds and/or for the safeguarding and disbursements of the proceeds of their sale for the uses and purposes for which they were issued and, if such trustee or trustees are so selected, shall fix its or their rights, duties, powers, and obligations. The bonds of each such issue or series: Shall be executed on behalf of such universities or colleges by the president of the board of regents or the chair of the board of trustees, and shall be attested by the secretary or the treasurer of such board, one of which signatures may

be a facsimile signature; and shall have the seal of such university or college impressed, printed, or lithographed thereon, and any interest coupons attached thereto shall be executed with the facsimile signatures of said officials. The bonds of each such issue or series and any of the coupons attached thereto shall be negotiable instruments within the provisions and intent of the negotiable instruments law of this state even though they shall be payable solely from any special fund or funds. [2011 c 336 § 709; 1983 c 167 § 31; 1972 ex.s. c 25 § 1; 1970 ex.s. c 56 § 22; 1969 ex.s. c 232 § 96; 1969 ex.s. c 223 § 28B.10.310. Prior: 1961 c 229 § 7. Formerly RCW 28.76.192.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

28B.10.400 Annuities and retirement income plans—

Authorized. (1) The boards of regents of the state universities, the boards of trustees of the regional universities and of The Evergreen State College, the state board for community and technical colleges, and the higher education coordinating board are authorized and empowered:

(a) To assist the faculties and such other employees exempt from civil service pursuant to *RCW 41.06.070 (1)(cc) and (2) as any such board may designate in the purchase of old age annuities or retirement income plans under such rules as any such board may prescribe, subject to the restrictions in subsection (2) of this section. County agricultural agents, home demonstration agents, 4-H club agents, and assistant county agricultural agents paid jointly by the Washington State University and the several counties shall be deemed to be full-time employees of the Washington State University for the purposes of this section;

(b) To provide, under such rules as any such board may prescribe for the faculty members or other employees exempt from civil service pursuant to *RCW 41.06.070 (1)(cc) and (2) under its supervision, for the retirement of any such faculty member or other exempt employee on account of age or condition of health, retirement on account of age to be not earlier than the sixty-fifth birthday: PROVIDED, That such faculty member or such other exempt employee may elect to retire at the earliest age specified for retirement by federal social security law: PROVIDED FURTHER, That any supplemental payment authorized by (c) of this subsection and paid as a result of retirement earlier than age sixty-five shall be at an actuarially reduced rate; and shall be provided only to those persons who participate in an annuity or retirement income plan under (a) of this subsection prior to July 1, 2011;

(c) To pay only to those persons who participate in an annuity or retirement income plan under (a) of this subsection prior to July 1, 2011, or to his or her designated beneficiary(s), each year after his or her retirement, a supplemental amount which, when added to the amount of such annuity or retirement income plan, or retirement income benefit pursuant to RCW 28B.10.415, received by the retired person or the retired person's designated beneficiary(s) in such year, will not exceed fifty percent of the average annual salary paid to such retired person for his or her highest two consecutive years of full-time service under an annuity or retirement income plan established pursuant to (a) of this subsection at an institution of higher education: PROVIDED, HOW-

EVER, That if such retired person prior to retirement elected a supplemental payment survivors option, any such supplemental payments to such retired person or the retired person's designated beneficiary(s) shall be at actuarially reduced rates: PROVIDED FURTHER, That if a faculty member or other employee of an institution of higher education who is a participant in a retirement plan authorized by this section dies, or has died before retirement but after becoming eligible for retirement on account of age, the designated beneficiary(s) shall be entitled to receive the supplemental payment authorized by this subsection to which such designated beneficiary(s) would have been entitled had said deceased faculty member or other employee retired on the date of death after electing a supplemental payment survivors option: PROVIDED FURTHER, That for the purpose of this subsection, the designated beneficiary(s) shall be (i) the surviving spouse of the retiree; or, (ii) with the written consent of such spouse, if any, such other person or persons as shall have an insurable interest in the retiree's life and shall have been nominated by written designation duly executed and filed with the retiree's institution of higher education.

(2) Boards are prohibited from offering a purchased annuity or retirement income plan authorized under this section to employees hired on or after July 1, 2011, who have retired or are eligible to retire from a public employees' retirement system described in RCW 41.50.030. The higher education coordinating board shall only offer participation in a purchased annuity or retirement income plan authorized under this section to employees who have previously contributed premiums to a similar qualified plan.

(3) During the 2011 legislative interim, the select committee on pension policy shall evaluate the suitability and necessity of the annuity and retirement plans authorized under this chapter for employees in various positions within higher education institutions. The select committee shall report its findings, including any recommendations for restrictions on future plan membership, to the ways and means committees of the house of representatives and the senate no later than December 31, 2011. [2011 1st sp.s. c 47 § 2; 2010 c 21 § 1; 1979 ex.s. c 259 § 1; 1977 ex.s. c 169 § 15; 1975 1st ex.s. c 212 § 1; 1973 1st ex.s. c 149 § 1; 1971 ex.s. c 261 § 1; 1969 ex.s. c 223 § 28B.10.400. Prior: 1965 c 54 § 2; 1957 c 256 § 1; 1955 c 123 § 1; 1947 c 223 § 1; 1943 c 262 § 1; 1937 c 223 § 1; Rem. Supp. 1947 § 4543-11. Formerly RCW 28.76.240.]

***Reviser's note:** RCW 41.06.070 was amended by 2011 1st sp.s. c 16 § 22, 2011 1st sp.s. c 39 § 4, and 2011 1st sp.s. c 43 § 1010, changing subsection (1)(cc) to subsection (1)(z).

Intent—2011 1st sp.s. c 47: "The legislature intends that the retirement and annuity programs of the state's institutions of higher education be revised for future participants to reflect changes that have already occurred in state pension plans. The legislature intends also that newly hired employees who are eligible for participation in an annuity or retirement income plan offered by a higher education institution have an opportunity to participate in either (1) that plan without a supplemental benefit under RCW 28B.10.400(1)(c), or (2) the public employees' retirement system plan 3 or the teachers' retirement system plan 3. Plan 3 provides a combination of defined contribution and defined benefit pension, which will be available for newly hired employees. Further, the legislature intends that effective July 1, 2011, state funding for annuity or retirement income plans under RCW 28B.10.400 will not exceed six percent of salary. The legislature also intends to reduce the expanded postretirement employment provisions for members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 that were temporarily expanded due to the shortage

of qualified workers in particular teaching and public employment categories, and eliminate postretirement employment exceptions that existed for annuity or retirement income plan-covered positions that have been the subject of abuse." [2011 1st sp.s. c 47 § 1.]

Effective dates—2011 1st sp.s. c 47: "Except for sections 10 and 19 of this act which take effect January 1, 2012, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 47 § 23.]

Additional notes found at www.leg.wa.gov

28B.10.405 Annuities and retirement income plans—Contributions by faculty and employees. Members of the faculties and such other employees exempt from civil service pursuant to *RCW 41.06.070 (1)(cc) and (2) as are designated by the boards of regents of the state universities, the boards of trustees of the regional universities and of The Evergreen State College, the higher education coordinating board, or the state board for community and technical colleges who do not opt to become members of the teachers' retirement system or the public employees' retirement system under RCW 41.32.836 or 41.40.798, or who are not prevented from participation in an annuity or retirement plan under RCW 28B.10.400(2) shall be required to contribute not less than five percent of their salaries during each year of full-time service after the first two years of such service toward the purchase of such annuity or retirement income plan; such contributions may be in addition to federal social security tax contributions, if any. [2011 1st sp.s. c 47 § 3; 1977 ex.s. c 169 § 16; 1973 1st ex.s. c 149 § 2; 1971 ex.s. c 261 § 2; 1969 ex.s. c 223 § 28B.10.405. Prior: 1955 c 123 § 2; 1947 c 223 § 2; Rem. Supp. 1947 § 4543-12. Formerly RCW 28.76.250.]

*Reviser's note: RCW 41.06.070 was amended by 2011 1st sp.s. c 16 § 22, 2011 1st sp.s. c 39 § 4, and 2011 1st sp.s. c 43 § 1010, changing subsection (1)(cc) to subsection (1)(z).

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Additional notes found at www.leg.wa.gov

28B.10.410 Annuities and retirement income plans—Limitation on institution's contribution. The boards of regents of the state universities, the boards of trustees of the regional universities and of The Evergreen State College, the higher education coordinating board, or the state board for community and technical colleges shall pay not more than one-half of the annual premium of any annuity or retirement income plan established under the provisions of RCW 28B.10.400. Such contribution shall not exceed ten percent of the salary of the faculty member or other employee on whose behalf the contribution is made. This contribution may be in addition to federal social security tax contributions made by the boards, if any. [2011 1st sp.s. c 47 § 4; 1977 ex.s. c 169 § 17; 1973 1st ex.s. c 149 § 3; 1971 ex.s. c 261 § 3; 1969 ex.s. c 223 § 28B.10.410. Prior: 1955 c 123 § 3; 1947 c 223 § 3; Rem. Supp. 1947 § 4543-13. Formerly RCW 28.76.260.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Additional notes found at www.leg.wa.gov

28B.10.415 Annuities and retirement income plans—Limitation on annuity or retirement income plan payment. The boards of regents of the state universities, the boards of trustees of the regional universities and of The Evergreen State College, the higher education coordinating board, or the state board for community and technical colleges shall not pay any amount to be added to the annuity or retirement income plan of any retired person who was first hired on or after July 1, 2011, or who has served for less than ten years in one or more of the state institutions of higher education. In the case of persons who have served more than ten years but less than twenty-five years no amount shall be paid in excess of four percent of the amount authorized in RCW 28B.10.400(1)(c), multiplied by the number of years of full-time service rendered by such person: PROVIDED, That credit for years of service at an institution of higher education shall be limited to those years in which contributions were made by a faculty member or other employee designated pursuant to RCW 28B.10.400(1)(a) and the institution or the state as a result of which a benefit is being received by a retired person from any Washington state public retirement plan: PROVIDED FURTHER, That all such benefits that a retired person is eligible to receive shall reduce any supplementation payments provided for in RCW 28B.10.400. [2011 1st sp.s. c 47 § 5; 1979 ex.s. c 259 § 2; 1977 ex.s. c 169 § 18; 1973 1st ex.s. c 149 § 4; 1971 ex.s. c 261 § 4; 1969 ex.s. c 223 § 28B.10.415. Prior: 1955 c 123 § 4; 1947 c 223 § 4; Rem. Supp. 1947 § 4543-14. Formerly RCW 28.76.270.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Additional notes found at www.leg.wa.gov

28B.10.417 Annuities and retirement income plans—Rights and duties of faculty or employees with Washington state teachers' retirement system credit—Regional universities and The Evergreen State College. (1) This section applies only to those persons who are first employed by a higher education institution in a position eligible for participation in an annuity or retirement program under RCW 28B.10.400 prior to July 1, 2011.

(2) A faculty member or other employee exempt from civil service pursuant to *RCW 41.06.070 (1)(cc) and (2) designated by the board of trustees of the applicable regional university or of The Evergreen State College as being subject to an annuity or retirement income plan and who, at the time of such designation, is a member of the Washington state teachers' retirement system, shall retain credit for such service in the Washington state teachers' retirement system and, except as provided in subsection (3) of this section, shall leave his or her accumulated contributions in the teachers' retirement fund. Upon his or her attaining eligibility for retirement under the Washington state teachers' retirement system, such faculty member or other employee shall receive from the Washington state teachers' retirement system a retirement allowance consisting of an annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age when becoming eligible for such retirement and a pension for each year of creditable service established and retained at the time of said designation as provided in RCW 41.32.497. Anyone who on July 1, 1967, was receiving pension payments from the teachers' retirement

system based on thirty-five years of creditable service shall thereafter receive a pension based on the total years of creditable service established with the retirement system: PROVIDED, HOWEVER, That any such faculty member or other employee exempt from civil service pursuant to *RCW 41.06.070 (1)(cc) and (2) who, upon attainment of eligibility for retirement under the Washington state teachers' retirement system, is still engaged in public educational employment, shall not be eligible to receive benefits under the Washington state teachers' retirement system until he or she ceases such public educational employment. Any retired faculty member or other employee who enters service in any public educational institution shall cease to receive pension payments while engaged in such service: PROVIDED FURTHER, That such service may be rendered up to seventy-five days in a school year without reduction of pension.

(3) A faculty member or other exempt employee designated by the board of trustees of the applicable regional university or of The Evergreen State College as being subject to the annuity and retirement income plan and who, at the time of such designation, is a member of the Washington state teachers' retirement system may, at his or her election and at any time, on and after midnight June 10, 1959, terminate his or her membership in the Washington state teachers' retirement system and withdraw his or her accumulated contributions and interest in the teachers' retirement fund upon written application to the board of trustees of the Washington state teachers' retirement system. Faculty members or other employees who withdraw their accumulated contributions, on and after the date of withdrawal of contributions, shall no longer be members of the Washington state teachers' retirement system and shall forfeit all rights of membership, including pension benefits, theretofore acquired under the Washington state teachers' retirement system. [2011 1st sp.s. c 47 § 6; 1977 ex.s. c 169 § 19; 1971 ex.s. c 261 § 5.]

*Reviser's note: RCW 41.06.070 was amended by 2011 1st sp.s. c 16 § 22, 2011 1st sp.s. c 39 § 4, and 2011 1st sp.s. c 43 § 1010, changing subsection (1)(cc) to subsection (1)(z).

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Additional notes found at www.leg.wa.gov

28B.10.423 Annuities and retirement income plans—Limit on retirement income—Adjustment of rates—Limitation of state funding—Actuarial valuation of supplemental benefit plans—Higher education retirement plan supplemental benefit fund. (1) For employees who are first employed by an institution of higher education in a position eligible for participation in an old age annuities or retirement income plan under this chapter prior to July 1, 2011, it is the intent of RCW 28B.10.400, 28B.10.405, 28B.10.410, 28B.10.415, 28B.10.420, and 28B.10.423 that the retirement income resulting from the contributions described herein from the state of Washington and the employee shall be projected actuarially so that it shall not exceed sixty percent of the average of the highest two consecutive years salary. Periodic review of the retirement systems established pursuant to RCW 28B.10.400, 28B.10.405, 28B.10.410, 28B.10.415, 28B.10.420, and 28B.10.423 will be undertaken at such time and in such manner as determined by the committees on ways and means of the senate and of the house of representatives,

the select committee on pension policy, and the pension funding council, and joint contribution rates will be adjusted if necessary to accomplish this intent.

(2) Beginning July 1, 2011, state funding for annuity or retirement income plans under RCW 28B.10.400 shall not exceed six percent of salary. The state board for community and technical colleges and the higher education coordinating board are exempt from the provisions of this subsection (2).

(3) By June 30, 2013, and every two years thereafter, each institution of higher education that is responsible for payment of supplemental amounts under RCW 28B.10.400(1)(c) shall contract with the state actuary under chapter 41.44 RCW for an actuarial valuation of their supplemental benefit plan. By June 30, 2013, and at least once every six years thereafter, each institution shall also contract with the state actuary under chapter 41.44 RCW for an actuarial experience study of the mortality, service, compensation, and other experience of the annuity or retirement income plans created in this chapter, and into the financial condition of each system. At the discretion of the state actuary, the valuation or experience study may be performed by the state actuary or by an outside actuarial firm under contract to the office of the state actuary. Each institution of higher education is required to provide the data and information required for the performance of the valuation or experience study to the office of the state actuary or to the actuary performing the study on behalf of the state actuary. The state actuary may charge each institution for the actual cost of the valuation or experience study through an interagency agreement. Upon completion of the valuation or experience study, the state actuary shall provide copies of the study to the institution of higher education and to the select committee on pension policy and the pension funding council.

(4)(a) A higher education retirement plan supplemental benefit fund is created in the custody of the state treasurer for the purpose of funding future benefit obligations of higher education retirement plan supplemental benefits. The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in the fund.

(b) From January 1, 2012, through June 30, 2013, an employer contribution rate of one-quarter of one percent of salary is established to begin prefunding the unfunded future obligations of the supplemental benefit established in RCW 28B.10.400.

(c) Beginning July 1, 2013, an employer contribution rate of one-half of one percent of salary is established to pre-fund the unfunded future obligations of the supplemental benefit established in RCW 28B.10.400.

(d) Consistent with chapter 41.50 RCW, the department of retirement systems shall collect the employer contribution rates established in this section from each state institution of higher education, and deposit those contributions into the higher education retirement plan supplemental benefit fund. The contributions made by each employer into the higher education retirement plan supplemental benefit fund and the earnings on those contributions shall be accounted for separately within the fund.

(e) Following the completion and review of the initial actuarial valuations and experience study conducted pursuant

to subsection (3) of this section, the pension funding council may:

(i) Adopt and make changes to the employer contribution rates established in this subsection consistent with the procedures established in chapter 41.45 RCW. If the actuarial valuations of the higher education retirement plans of each institution contributing to the higher education retirement plan supplemental benefit fund suggest that different contribution rates are appropriate for each institution, different rates may be adopted. Rates adopted by the pension funding council are subject to revision by the legislature;

(ii) Recommend legislation that will, upon accumulation of sufficient funding in the higher education retirement plan supplemental benefit fund, transfer the responsibility for making supplemental benefit payments to the department of retirement systems, and adjust employer contribution rates to reflect the transfer of responsibility. [2011 1st sp.s. c 47 § 7; 1973 1st ex.s. c 149 § 8.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Additional notes found at www.leg.wa.gov

28B.10.430 Annuities and retirement income plans—Minimum monthly benefit—Computation. (1) This section applies only to those persons who are first employed by an institution of higher education in a position eligible for participation in an old age annuities or retirement income plan under this chapter prior to July 1, 2011.

(2) For any person receiving a monthly benefit pursuant to a program established under RCW 28B.10.400, the pension portion of such benefit shall be the sum of the following amounts:

(a) One-half of the monthly benefit payable under such program by a life insurance company; and

(b) The monthly equivalent of the supplemental benefit described in RCW 28B.10.400(1)(c).

(3) Notwithstanding any provision of law to the contrary, effective July 1, 1979, no person receiving a monthly benefit pursuant to RCW 28B.10.400 shall receive, as the pension portion of that benefit, less than ten dollars per month for each year of service creditable to the person whose service is the basis of the benefit. Portions of a year shall be treated as fractions of a year and the decimal equivalent shall be multiplied by ten dollars. Where the benefit was adjusted at the time benefit payments to the beneficiary commenced, the minimum pension provided in this section shall be adjusted in a manner consistent with that adjustment.

(4) Notwithstanding any provision of law to the contrary, effective July 1, 1979, the monthly benefit of each person who commenced receiving a monthly benefit under this chapter as of a date no later than July 1, 1974, shall be permanently increased by a post-retirement adjustment. Such adjustment shall be calculated as follows:

(a) Monthly benefits to which this subsection and subsection (3) of this section are both applicable shall be determined by first applying subsection (3) of this section and then applying this subsection. The institution shall determine the total years of creditable service and the total dollar benefit base accrued as of December 31, 1978, except that this determination shall take into account only those persons to whom this subsection applies;

(b) The institution shall multiply the total benefits determined in (a) of this subsection by six percent and divide the dollar value thus determined by the total service determined in (a) of this subsection. The resultant figure shall then be a post-retirement increase factor which shall be applied as specified in (c) of this subsection;

(c) Each person to whom this subsection applies shall receive an increase which is the product of the factor determined in (b) of this subsection multiplied by the years of creditable service. [2011 1st sp.s. c 47 § 8; 1979 ex.s. c 96 § 5.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

28B.10.510 Attorney general as advisor. The attorney general of the state shall be the legal advisor to the presidents and the boards of regents and trustees of the institutions of higher education and he or she shall institute and prosecute or defend all suits in behalf of the same. [2011 c 336 § 710; 1973 c 62 § 3; 1969 ex.s. c 223 § 28B.10.510. Prior: 1909 c 97 p 242 § 8; RRS § 4560; prior: 1897 c 118 § 189; 1890 p 399 § 19. Formerly RCW 28.77.125; 28.76.300.]

Attorney general's powers in general: Chapter 43.10 RCW.

Employment of attorneys by state agencies restricted: RCW 43.10.067.

Additional notes found at www.leg.wa.gov

28B.10.520 Regents and trustees—Oaths. Each member of a board of regents or board of trustees of a university or other state institution of higher education, before entering upon his or her duties, shall take and subscribe an oath to discharge faithfully and honestly his or her duties and to perform strictly and impartially the same to the best of his or her ability, such oath to be filed with the secretary of state. [2011 c 336 § 711; 1977 ex.s. c 169 § 22; 1969 ex.s. c 223 § 28B.10.520. Prior: 1909 c 97 p 248 § 13; RRS § 4593; prior: 1897 c 118 § 202; 1891 c 145 § 14. Formerly RCW 28.80.140.]

Additional notes found at www.leg.wa.gov

28B.10.528 Delegation of powers and duties by governing boards. The governing boards of institutions of higher education shall have power, when exercised by resolution, to delegate to the president or his or her designee, of their respective university or college, any of the powers and duties vested in or imposed upon such governing board by law. Delegated powers and duties may be exercised in the name of the respective governing boards. [2011 c 336 § 712; 1971 ex.s. c 57 § 21.]

28B.10.567 Police forces for universities and The Evergreen State College—Benefits for duty-related death, disability or injury. The boards of regents of the state universities and board of trustees of the regional universities and the board of trustees of The Evergreen State College are authorized and empowered, under such rules and regulations as any such board may prescribe for the duly sworn police officers employed by any such board as members of a police force established pursuant to RCW 28B.10.550, to provide for the payment of death or disability benefits or medical expense reimbursement for death, dis-

ability, or injury of any such duly sworn police officer who, in the line of duty, loses his or her life or becomes disabled or is injured, and for the payment of such benefits to be made to any such duly sworn police officer or his or her surviving spouse or the legal guardian of his or her child or children, as defined in RCW 41.26.030(6), or his or her estate: PROVIDED, That the duty-related benefits authorized by this section shall in no event be greater than the benefits authorized on June 25, 1976, for duty-related death, disability, or injury of a law enforcement officer under chapter 41.26 RCW: PROVIDED FURTHER, That the duty-related benefits authorized by this section shall be reduced to the extent of any amounts received or eligible to be received on account of the duty-related death, disability, or injury to any such duly sworn police officer, his or her surviving spouse, the legal guardian of his or her child or children, or his or her estate, under workers' compensation, social security including the changes incorporated under Public Law 89-97 as now or hereafter amended, or disability income insurance and health care plans under chapter 41.05 RCW. [2011 c 336 § 713; 1987 c 185 § 2; 1977 ex.s. c 169 § 26; 1975-'76 2nd ex.s. c 81 § 1.]

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

Additional notes found at www.leg.wa.gov

28B.10.5691 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.10.696 Transfer students' credit—List of academic courses equivalent to one year of general education credit—One-year academic completion certificate—Arts and sciences degrees for students entering with junior status—Publication of recommended courses by academic major for transfer students. (1) A graduate of a community or technical college in this state who has earned a transferable associate of arts or sciences degree when admitted to a four-year institution of higher education shall have junior standing. A graduate who has earned the direct transfer associate of arts degree will be deemed to have met the lower division general education requirements of the receiving four-year institution of higher education. A graduate who has earned the associate of science transfer degree will be deemed to have met most requirements that prepare the graduate for baccalaureate degree majors in science, technology, engineering, and math and will be required to complete only such additional lower division, general education courses as would have been required to complete the direct transfer associate of arts degree.

(2) A student who has earned the equivalent of ninety quarter credit hours and has completed the general education requirements at that four-year institution of higher education in Washington when admitted to another four-year institution of higher education shall have junior standing and shall be deemed to have met the lower division general education requirements of the institution to which the student transfers.

(3) The community and technical colleges, jointly with the four-year institutions of higher education, must develop a list of academic courses that are equivalent to one-year's worth of general education credit and that would transfer for

that purpose to any other two or four-year institution of higher education. If a student completes one-year's worth of general education credits, the student may be issued a one-year academic completion certificate. This certificate shall be accepted at any transferring two or four-year institution of higher education.

(4) Each institution of higher education must develop a minimum of one degree within the arts and sciences disciplines that can be completed within the equivalent of ninety quarter upper division credits by any student who enters an institution of higher education with junior status and lower division general education requirements completed.

(5) Each four-year institution of higher education must publish a list of recommended courses for each academic major designed to help students who are planning to transfer design their course of study. Publication of the list of courses must be easily identified and accessible on the institution's web site.

(6) The requirements to publish a list of recommended courses for each academic major under this section does not apply if an institution does not require courses or majors to meet specific requirements but generally applies credits earned towards degree requirements. [2011 1st sp.s. c 10 § 11.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

28B.10.786 Budget calculation—Student financial aid programs. (Effective July 1, 2012.) It is the policy of the state of Washington that financial need not be a barrier to participation in higher education. It is also the policy of the state of Washington that the essential requirements level budget calculation include funding for state student financial aid programs. The calculation should, at a minimum, include a funding level equal to the amount provided in the second year of the previous biennium in the omnibus appropriations act, adjusted for the percentage of needy resident students, by educational sector, likely to be included in any enrollment increases necessary to maintain, by educational sector, the participation rate funded in the 1993 fiscal year. The calculation should also be adjusted to reflect, by educational sector, any increases in cost of attendance. The cost of attendance figures should be calculated by the office of financial management and provided to the appropriate legislative committees by June 30th of each even-numbered year. [2011 1st sp.s. c 11 § 138; 1993 sp.s. c 15 § 7.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Effective date—1993 sp.s. c 15: See notes following RCW 28B.10.776.

28B.10.790 State student financial aid program—Certain residents attending college or university in another state, applicability to—Authorization. (Effective July 1, 2012.) Washington residents attending any nonprofit college or university in another state which has a reciprocity agreement with the state of Washington shall be eligible for the student financial aid program outlined in chapter 28B.92 RCW if (1) they qualify as a "needy student" under RCW 28B.92.030(5), and (2) the institution attended is a member

institution of an accrediting association recognized by rule of the office of student financial assistance for the purposes of this section and is specifically encompassed within or directly affected by such reciprocity agreement and agrees to and complies with program rules and regulations pertaining to such students and institutions adopted pursuant to RCW 28B.92.150. [2011 1st sp.s. c 11 § 139; 2004 c 275 § 44; 1985 c 370 § 54; 1980 c 13 § 1.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Additional notes found at www.leg.wa.gov

28B.10.792 State student financial aid program—Certain residents attending college or university in another state, applicability to—Guidelines. (Effective July 1, 2012.) The office of student financial assistance shall develop guidelines for determining the conditions under which an institution can be determined to be directly affected by a reciprocity agreement for the purposes of RCW 28B.10.790: PROVIDED, That no institution shall be determined to be directly affected unless students from the county in which the institution is located are provided, pursuant to a reciprocity agreement, access to Washington institutions at resident tuition and fee rates to the extent authorized by Washington law. [2011 1st sp.s. c 11 § 140; 1985 c 370 § 55; 1980 c 13 § 2.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.10.840 Definitions for purposes of RCW 28B.10.840 through 28B.10.844. (Effective July 1, 2012.) The term "institution of higher education" whenever used in RCW 28B.10.840 through 28B.10.844, shall be held and construed to mean any public institution of higher education in Washington. The term "educational board" whenever used in RCW 28B.10.840 through 28B.10.844, shall be held and construed to mean the state board for community and technical colleges. [2011 1st sp.s. c 11 § 141; 1985 c 370 § 57; 1975 1st ex.s. c 132 § 17; 1972 ex.s. c 23 § 1.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.10.844 Regents, trustees, officers, employees, or agents of institutions of higher education or educational boards, insurance to protect and hold personally harmless. The board of regents and the board of trustees of each of the state's institutions of higher education and governing body of an educational board are authorized to purchase insurance to protect and hold personally harmless any regent, trustee, officer, employee, or agent of their respective institution, any member of an educational board, its officers, employees or agents, from any action, claim, or proceeding instituted against him or her arising out of the performance or

failure of performance of duties for or employment with such institution or educational board and to hold him or her harmless from any expenses connected with the defense, settlement, or monetary judgments from such actions. [2011 c 336 § 714; 1972 ex.s. c 23 § 3.]

Liability coverage of university personnel and students: RCW 28B.20.250 through 28B.20.255.

28B.10.916 Supplemental instructional materials for students with print access disability. (1) An individual, firm, partnership or corporation that publishes or manufactures instructional materials for students attending any public or private institution of higher education in the state of Washington shall provide to the public or private institution of higher education, for use by students attending the institution, any instructional material in an electronic format mutually agreed upon by the publisher or manufacturer and the public or private institution of higher education. Computer files or electronic versions of printed instructional materials shall be provided; video materials must be captioned or accompanied by transcriptions of spoken text; and audio materials must be accompanied by transcriptions. These supplemental materials shall be provided to the public or private institution of higher education at no additional cost and in a timely manner, upon receipt of a written request as provided in subsection (2) of this section.

(2) A written request for supplemental materials must:

(a) Certify that a student with a print access disability attending or registered to attend a public or participating private institution of higher education has purchased the instructional material or the public or private institution of higher education has purchased the instructional material for use by a student with a print access disability;

(b) Certify that the student has a print access disability that substantially prevents him or her from using standard instructional materials;

(c) Certify that the instructional material is for use by the student in connection with a course in which he or she is registered or enrolled at the public or private institution of higher education; and

(d) Be signed by the coordinator of services for students with disabilities at the public or private institution of higher education or by the college or campus official responsible for monitoring compliance with the Americans with disabilities act of 1990 (42 U.S.C. 12101 et seq.) at the public or private institution of higher education.

(3) An individual, firm, partnership or corporation specified in subsection (1) of this section may also require that, in addition to the requirements in subsection (2) of this section, the request include a statement signed by the student agreeing to both of the following:

(a) He or she will use the instructional material provided in specialized format solely for his or her own educational purposes; and

(b) He or she will not copy or duplicate the instructional material provided in specialized format for use by others.

(4) A public or private institution of higher education that provides a specialized format version of instructional material pursuant to this section may not require that the student return the specialized format version of the instructional material, except that if the institution has determined that it is

not required to allow the student to retain the material under the Americans with disabilities act or other applicable laws, and the material was translated or transcribed into a specialized format at the expense of the institution and the cost to reproduce a copy of the translation or transcription is greater than one hundred dollars, the institution may require that the student return the specialized format version.

(5) If a public or private institution of higher education provides a student with the specialized format version of an instructional material, the media must be copy-protected or the public or private institution of higher education shall take other reasonable precautions to ensure that students do not copy or distribute specialized format versions of instructional materials in violation of the copyright revision act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(6) For purposes of this section:

(a) "Instructional material or materials" means textbooks and other materials that are required or essential to a student's success in a postsecondary course of study in which a student with a disability is enrolled. The determination of which materials are "required or essential to student success" shall be made by the instructor of the course in consultation with the official making the request in accordance with guidelines issued pursuant to subsection (10) of this section. The term specifically includes both textual and nontextual information.

(b) "Print access disability" means a condition in which a person's independent reading of, reading comprehension of, or visual access to materials is limited or reduced due to a sensory, neurological, cognitive, physical, psychiatric, or other disability recognized by state or federal law. The term is applicable, but not limited to, persons who are blind, have low vision, or have reading disorders or physical disabilities.

(c) "Structural integrity" means all instructional material, including but not limited to the text of the material, sidebars, the table of contents, chapter headings and subheadings, footnotes, indexes, glossaries, graphs, charts, illustrations, pictures, equations, formulas, and bibliographies. Structural order of material shall be maintained. Structural elements, such as headings, lists, and tables must be identified using current markup and tools. If good faith efforts fail to produce an agreement between the publisher or manufacturer and the public or private institution of higher education, as to an electronic format that will preserve the structural integrity of instructional materials, the publisher or manufacturer shall provide the instructional material in a verified and valid HTML format and shall preserve as much of the structural integrity of the instructional materials as possible.

(d) "Specialized format" means Braille, audio, or digital text that is exclusively for use by blind or other persons with print access disabilities.

(7) Nothing in this section is to be construed to prohibit a public or private institution of higher education from assisting a student with a print access disability through the use of an electronic version of instructional material gained through this section or by transcribing or translating or arranging for the transcription or translation of the instructional material into specialized formats that provide persons with print access disabilities the ability to have increased independent access to instructional materials. If such specialized format is made, the public or private institution of higher education may share the specialized format version of the instructional

material with other students with print access disabilities for whom the public or private institution of higher education is authorized to request electronic versions of instructional material. The addition of captioning to video material by a Washington public or private institution of higher education does not constitute an infringement of copyright.

(8) A specialized format version of instructional materials developed at one public or private institution of higher education in Washington state may be shared for use by a student at another public or private institution of higher education in Washington state for whom the latter public or private institution of higher education is authorized to request electronic versions of instructional material.

(9) Nothing in this section shall be deemed to authorize any use of instructional materials that would constitute an infringement of copyright under the copyright revision act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(10) The governing boards of public and participating private institutions of higher education in Washington state shall each adopt guidelines consistent with this section for its implementation and administration. At a minimum, the guidelines shall address all of the following:

(a) The designation of materials deemed "required or essential to student success";

(b) The determination of the availability of technology for the conversion of materials pursuant to subsection (5) of this section and the conversion of mathematics and science materials pursuant to subsection (6)(c) of this section;

(c) The procedures and standards relating to distribution of files and materials pursuant to this section;

(d) The guidelines shall include procedures for granting exceptions when it is determined that an individual, firm, partnership or corporation that publishes or manufactures instructional materials is not technically able to comply with the requirements of this section; and

(e) Other matters as are deemed necessary or appropriate to carry out the purposes of this section.

(11) A violation of this chapter constitutes an unfair practice under chapter 49.60 RCW, the law against discrimination. All rights and remedies under chapter 49.60 RCW, including the right to file a complaint with the human rights commission and to bring a civil action, apply. [2011 c 356 § 2; 2004 c 46 § 1.]

28B.10.920 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.10.921 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.10.922 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.10.924 Aviation biofuel demonstration project—Income from commercialization of patents, copyrights, proprietary processes, or licenses—Deposit of proportionate percentage of income. If a state university or foundation derives income from the commercialization of patents, copyrights, proprietary processes, or licenses developed by the forest biomass to aviation fuel demonstration

project in section 2, chapter 217, Laws of 2011, a percentage of that income, proportionate to the percent of state resources used to develop and commercialize the patent, copyright, proprietary process, or license must be deposited in the state general fund. [2011 c 217 § 3.]

Findings—2011 c 217: "The legislature finds that the work that is already underway in exploring the potential of linking Washington's forest products and aeronautics industries in producing a sustainable aviation biofuel with feedstock from the state's public and private forest lands is important to this state's economy and its sustainable energy policies. The sustainable aviation fuel Northwest initiative has set the stage by beginning the process and initiating stakeholder involvement in assessing the options for developing the biofuel industry in the Northwest.

The legislature further finds that the work that is being done by the department of natural resources and our state research universities in exploring opportunities to develop aviation biofuel in Washington will provide the scientific and technological analyses needed to determine a pathway for the sustainable use of forest biomass to produce biofuels." [2011 c 217 § 1.]

Chapter 28B.12 RCW

STATE WORK-STUDY PROGRAM

Sections

- 28B.12.030 Definitions. (*Effective July 1, 2012.*)
 28B.12.040 Office of financial assistance to develop and administer program—Agreements authorized, limitation. (*Effective July 1, 2012.*)
 28B.12.050 Disbursal of state work-study funds—Criteria. (*Effective July 1, 2012.*)
 28B.12.055 Work-study opportunity grant for high-demand occupations. (*Effective July 1, 2012.*)
 28B.12.060 Rules—Mandatory provisions. (*Effective July 1, 2012.*)
 28B.12.070 Annual report of institutions to office of student financial assistance. (*Effective July 1, 2012.*)

28B.12.030 Definitions. (*Effective July 1, 2012.*) As used in this chapter, the following words and terms shall have the following meanings, unless the context shall clearly indicate another or different meaning or intent:

(1) The term "needy student" shall mean a student enrolled or accepted for enrollment at a postsecondary institution who, according to a system of need analysis approved by the office of student financial assistance, demonstrates a financial inability, either parental, familial, or personal, to bear the total cost of education for any semester or quarter.

(2) The term "eligible institution" shall mean any postsecondary institution in this state accredited by the Northwest Association of Schools and Colleges, or a branch of a member institution of an accrediting association recognized by rule of the *board for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, or any public technical college in the state. [2011 1st sp.s. c 11 § 142; 2002 c 187 § 2; 1994 c 130 § 3; 1974 ex.s. c 177 § 3.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.12.040 Office of financial assistance to develop and administer program—Agreements authorized, limi-

tation. (*Effective July 1, 2012.*) The office of student financial assistance shall develop and administer the state work-study program. The *board shall be authorized to enter into agreements with employers and eligible institutions for the operation of the program. These agreements shall include such provisions as the office may deem necessary or appropriate to carry out the purposes of this chapter.

With the exception of off-campus community service placements, the share from moneys disbursed under the state work-study program of the compensation of students employed under such program in accordance with such agreements shall not exceed eighty percent of the total such compensation paid such students.

By rule, the office shall define community service placements and may determine any salary matching requirements for any community service employers. [2011 1st sp.s. c 11 § 143; 2009 c 560 § 21; 1994 c 130 § 4; 1993 c 385 § 3; 1985 c 370 § 58; 1974 ex.s. c 177 § 4.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

Purpose—1974 ex.s. c 177: See RCW 28B.12.020.

Additional notes found at www.leg.wa.gov

28B.12.050 Disbursal of state work-study funds—Criteria. (*Effective July 1, 2012.*) The office of student financial assistance shall disburse state work-study funds. In performing its duties under this section, the office shall consult eligible institutions and postsecondary education advisory and governing bodies. The office shall establish criteria designed to achieve such distribution of assistance under this chapter among students attending eligible institutions as will most effectively carry out the purposes of this chapter. [2011 1st sp.s. c 11 § 144; 1994 c 130 § 5; 1987 c 330 § 201; 1985 c 370 § 59; 1974 ex.s. c 177 § 5.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.12.055 Work-study opportunity grant for high-demand occupations. (*Effective July 1, 2012.*) (1) Within existing resources, the office of student financial assistance shall establish the work-study opportunity grant for high-demand occupations, a competitive grant program to encourage job placements in high-demand fields. The office shall award grants to eligible institutions of higher education that have developed a partnership with a proximate organization willing to host work-study placements. Partner organizations may be nonprofit organizations, for-profit firms, or public agencies. Eligible institutions of higher education must verify that all job placements will last for a minimum of one academic quarter or one academic semester, depending

on the system used by the eligible institution of higher education.

(2) The office may adopt rules to identify high-demand fields for purposes of this section. The legislature recognizes that the high-demand fields identified by the office may differ in different regions of the state.

(3) The office may award grants to eligible institutions of higher education that cover both student wages and program administration.

(4) The office shall develop performance benchmarks regarding program success including, but not limited to, the number of students served, the amount of employer contributions, and the number of participating high-demand employers. [2011 1st sp.s. c 11 § 145; 2009 c 215 § 12.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—Effective date—2009 c 215: See notes following RCW 28B.92.030.

28B.12.060 Rules—Mandatory provisions. (Effective July 1, 2012.) The office of student financial assistance shall adopt rules as may be necessary or appropriate for effecting the provisions of this chapter, and not in conflict with this chapter, in accordance with the provisions of chapter 34.05 RCW, the administrative procedure act. Such rules shall include provisions designed to make employment under the work-study program reasonably available, to the extent of available funds, to all eligible needy students in eligible post-secondary institutions. The rules shall include:

(1) Providing work under the state work-study program that will not result in the displacement of employed workers or impair existing contracts for services;

(2) Furnishing work only to a student who:

(a) Is capable, in the opinion of the eligible institution, of maintaining good standing in such course of study while employed under the program covered by the agreement; and

(b) Has been accepted for enrollment as at least a half-time student at the eligible institution or, in the case of a student already enrolled in and attending the eligible institution, is in good standing and in at least half-time attendance there either as an undergraduate, graduate or professional student; and

(c) Is not pursuing a degree in theology;

(3) Placing priority on providing:

(a) Work opportunities for students who are residents of the state of Washington as defined in RCW 28B.15.012 and 28B.15.013, particularly former foster youth as defined in RCW 28B.92.060;

(b) Job placements in fields related to each student's academic or vocational pursuits, with an emphasis on off-campus job placements whenever appropriate; and

(c) Off-campus community service placements;

(4) To the extent practicable, limiting the proportion of state subsidy expended upon nonresident students to fifteen percent, or such less amount as specified in the biennial appropriations act;

(5) Provisions to assure that in the state institutions of higher education, utilization of this work-study program:

(a) Shall only supplement and not supplant classified positions under jurisdiction of chapter 41.06 RCW;

[2011 RCW Supp—page 534]

(b) That all positions established which are comparable shall be identified to a job classification under the director of personnel's classification plan and shall receive equal compensation;

(c) Shall not take place in any manner that would replace classified positions reduced due to lack of funds or work; and

(d) That work study positions shall only be established at entry level positions of the classified service unless the overall scope and responsibilities of the position indicate a higher level; and

(6) Provisions to encourage job placements in high employer demand occupations that meet Washington's economic development goals, including those in international trade and international relations. The office shall permit appropriate job placements in other states and other countries. [2011 1st sp.s. c 11 § 146; 2009 c 172 § 1; 2005 c 93 § 4; 2002 c 354 § 224; 1994 c 130 § 6. Prior: 1993 sp.s. c 18 § 3; 1993 c 281 § 14; 1987 c 330 § 202; 1985 c 370 § 60; 1974 ex.s. c 177 § 6.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—2005 c 93: See note following RCW 74.13.570.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Additional notes found at www.leg.wa.gov

28B.12.070 Annual report of institutions to office of student financial assistance. (Effective July 1, 2012.) Each eligible institution shall submit to the office of student financial assistance an annual report in accordance with such requirements as are adopted by the *board. [2011 1st sp.s. c 11 § 147; 1994 c 130 § 7; 1985 c 370 § 61; 1974 ex.s. c 177 § 7.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

Chapter 28B.14D RCW

1979 BOND ISSUE FOR CAPITAL IMPROVEMENTS

Sections

28B.14D.090 Prerequisite for issuance of bonds.

28B.14D.090 Prerequisite for issuance of bonds. The bonds authorized by this chapter shall be issued only after an officer designated by the board of regents or board of trustees of each institution of higher education receiving an appropriation from the higher education construction account has certified, based upon his or her estimates of future tuition income and other factors, that an adequate balance will be maintained in that institution's building account or capital projects account to enable the board to meet the requirements of RCW 28B.14D.070 during the life of the bonds to be issued. [2011 c 336 § 715; 1979 ex.s. c 253 § 9.]

Chapter 28B.14G RCW

1981 BOND ISSUE FOR CAPITAL IMPROVEMENTS
(1981 C 233)

Sections

28B.14G.080 Issuance of bonds subject to certification of maintenance of fund balances.

28B.14G.080 Issuance of bonds subject to certification of maintenance of fund balances. The bonds authorized by this chapter shall be issued only after an officer designated by the board of regents or board of trustees of each institution of higher education receiving an appropriation from the higher education construction account has certified, based upon his or her estimates of future tuition income and other factors, that an adequate balance will be maintained in that institution's building account or capital projects account to enable the board to meet the requirements of RCW 28B.14G.060 during the life of the bonds to be issued: PROVIDED, That with respect to any hospital-related project at the University of Washington, it shall be certified, based on estimates of the hospital's adjusted gross revenues and other factors, that an adequate balance will be maintained in that institution's local hospital account to enable the board to meet the requirements of RCW 28B.14G.060 during the life of the bonds to be issued. [2011 c 336 § 716; 1981 c 233 § 8.]

Chapter 28B.15 RCW

COLLEGE AND UNIVERSITY FEES

Sections

28B.15.012 Classification as resident or nonresident student—Definitions. (*Effective July 1, 2012.*)

28B.15.013 Classification as resident or nonresident student—Standards for determining domicile in the state—Presumptions—Cut-off date for classification application change. (*Effective July 1, 2012.*)

28B.15.015 Classification as resident or nonresident student—Rules. (*Effective July 1, 2012.*)

28B.15.031 "Operating fees"—Defined—Disposition.

28B.15.067 Tuition fees—Established.

28B.15.068 Estimates of per-student funding level and tuition—Reports—"Global challenge states"—Communication regarding available tax credits—Tuition mitigation plans (*as amended by 2011 1st sp.s. c 10.*)

28B.15.068 Tuition fees increase limitations—State funding goals—Reports—"Global challenge states"—Notification of availability of American opportunity tax credit (*as amended by 2011 1st sp.s. c 50.*)

28B.15.0681 Information provided to students on tuition billing statements or web site—Notice of federal educational tax credits.

28B.15.100 Tuition and fees set by individual institutions—Limitations—Tuition and fees for certain part-time, additional time, and out-of-state students. (*Effective until July 1, 2012.*)

28B.15.100 Tuition and fees set by individual institutions—Limitations—Tuition and fees for certain part-time, additional time, and out-of-state students. (*Effective July 1, 2012.*)

28B.15.101 Authority to modify tuition rates—Performance-based measures and goals—Institutional performance plans.

28B.15.102 Institutional tuition increases—Financial aid offset—Reports—Resident freshman undergraduate enrollment at the University of Washington, Seattle campus.

28B.15.210 Fees—University of Washington—Disposition of building fees.

28B.15.310 Fees—Washington State University—Disposition of building fees.

28B.15.465 Repealed.

28B.15.543 Waiver or grant of tuition and fees for recipients of the Washington scholars award—Qualifications. (*Effective July 1, 2012.*)

28B.15.610 Voluntary fees of students. (*Effective January 1, 2012.*)

28B.15.732 Washington/Oregon reciprocity tuition and fee program—Reimbursement when greater net revenue loss. (*Effective July 1, 2012.*)

28B.15.736 Repealed.

28B.15.752 Washington/Idaho reciprocity tuition and fee program—Reimbursement when greater net revenue loss. (*Effective July 1, 2012.*)

28B.15.754 Repealed.

28B.15.758 Repealed.

28B.15.760 Loan program for mathematics and science teachers—Definitions. (*Effective July 1, 2012.*)

28B.15.762 Loan program for mathematics and science teachers—Terms and conditions—Collection—Disposition of payments—Rules. (*Effective July 1, 2012.*)

28B.15.012 Classification as resident or nonresident student—Definitions. (*Effective July 1, 2012.*) Whenever used in this chapter:

(1) The term "institution" shall mean a public university, college, or community college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) Any person who has completed the full senior year of high school and obtained a high school diploma, both at a Washington public high school or private high school approved under chapter 28A.195 RCW, or a person who has received the equivalent of a diploma; who has lived in Washington for at least three years immediately prior to receiving the diploma or its equivalent; who has continuously lived in the state of Washington after receiving the diploma or its equivalent and until such time as the individual is admitted to an institution of higher education under subsection (1) of this section; and who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other

activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses;

(f) Any person who has lived in Washington, primarily for purposes other than educational, for at least one year immediately before the date on which the person has enrolled in an institution, and who holds lawful nonimmigrant status pursuant to 8 U.S.C. Sec. (a)(15) (E)(iii), (H)(i), or (L), or who holds lawful nonimmigrant status as the spouse or child of a person having nonimmigrant status under one of those subsections, or who, holding or having previously held such lawful nonimmigrant status as a principal or derivative, has filed an application for adjustment of status pursuant to 8 U.S.C. Sec. 1255(a);

(g) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

(h) A student who is the spouse or a dependent of a person who is on active military duty stationed in the state. If the person on active military duty is reassigned out-of-state, the student maintains the status as a resident student so long as the student is continuously enrolled in a degree program;

(i) A student who resides in the state of Washington and is the spouse or a dependent of a person who is a member of the Washington national guard;

(j) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725;

(k) A student who meets the requirements of RCW 28B.15.0131: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(l) A student who resides in Washington and is on active military duty stationed in the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington; or

(m) A student who resides in Washington and is the spouse or a dependent of a person who resides in Washington and is on active military duty stationed in the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington. If the person on active military duty moves from Washington or is reassigned out of the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington, the student maintains the status as a resident student so long as the student resides in Washington and is continuously enrolled in a degree program.

(3) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of this section and RCW 28B.15.013. Except for students qualifying under subsection (2)(e) or (j) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter.

(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States citizenship immigration services or is not otherwise permanently residing in the United States under color of law and who does not also meet and comply with all the applicable requirements in this section and RCW 28B.15.013.

(4) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(5) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules adopted by the office of student financial assistance and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the *board may require.

(6) The term "active military duty" means the person is serving on active duty in:

(a) The armed forces of the United States government; or

(b) The Washington national guard; or

(c) The coast guard, merchant mariners, or other nonmilitary organization when such service is recognized by the United States government as equivalent to service in the armed forces. [2011 1st sp.s. c 11 § 148; 2010 c 183 § 1; 2009 c 220 § 1; 2004 c 128 § 1; 2003 c 95 § 1; 2002 c 186 § 2. Prior: (2002 c 186 § 1 expired June 30, 2002); 2000 c 160 § 1; 2000 c 117 § 2; (2000 c 117 § 1 expired June 30, 2002); 1999 c 320 § 5; 1997 c 433 § 2; 1994 c 188 § 2; 1993 sp.s. c 18 § 4; prior: 1987 c 137 § 1; 1987 c 96 § 1; 1985 c 370 § 62; 1983 c 285 § 1; 1982 1st ex.s. c 37 § 1; 1972 ex.s. c 149 § 1; 1971 ex.s. c 273 § 2.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—2009 c 220: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009." [2009 c 220 § 2.]

Intent—2003 c 95: "It is the intent of the legislature to ensure that students who receive a diploma from a Washington state high school or receive the equivalent of a diploma in Washington state and who have lived in Washington for at least three years prior to receiving their diploma or its equivalent are eligible for in-state tuition rates when they enroll in a public institution of higher education in Washington state." [2003 c 95 § 2.]

Effective date—2003 c 95: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 95 § 4.]

Expiration date—2002 c 186 § 1: "Section 1 of this act expires June 30, 2002." [2002 c 186 § 4.]

Effective date—2002 c 186 § 2: "Section 2 of this act takes effect June 30, 2002." [2002 c 186 § 5.]

Intent—Severability—1997 c 433: See notes following RCW 28B.15.725.

Additional notes found at www.leg.wa.gov

28B.15.013 Classification as resident or nonresident student—Standards for determining domicile in the state—Presumptions—Cut-off date for classification application change. (Effective July 1, 2012.) (1) The establishment of a new domicile in the state of Washington by a person formerly domiciled in another state has occurred if such person is physically present in Washington primarily for purposes other than educational and can show satisfactory proof that such person is without a present intention to return to such other state or to acquire a domicile at some other place outside of Washington.

(2) Unless proven to the contrary it shall be presumed that:

(a) The domicile of any person shall be determined according to the individual's situation and circumstances rather than by marital status or sex.

(b) A person does not lose a domicile in the state of Washington by reason of residency in any state or country while a member of the civil or military service of this state or of the United States, nor while engaged in the navigation of the waters of this state or of the United States or of the high seas if that person returns to the state of Washington within one year of discharge from said service with the intent to be domiciled in the state of Washington; any resident dependent student who remains in this state when such student's parents, having theretofore been domiciled in this state for a period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution, remove from this state, shall be entitled to continued classification as a resident student so long as such student's attendance (except summer sessions) at an institution in this state is continuous.

(3) To aid the institution in deciding whether a student, parent, legally appointed guardian or the person having legal custody of a student is domiciled in the state of Washington primarily for purposes other than educational, the rules and regulations adopted by the office of student financial assistance shall include but not be limited to the following:

(a) Registration or payment of Washington taxes or fees on a motor vehicle, mobile home, travel trailer, boat, or any other item of personal property owned or used by the person for which state registration or the payment of a state tax or fee is required will be a factor in considering evidence of the establishment of a Washington domicile.

(b) Permanent full time employment in Washington by a person will be a factor in considering the establishment of a Washington domicile.

(c) Registration to vote for state officials in Washington will be a factor in considering the establishment of a Washington domicile.

(4) After a student has registered at an institution such student's classification shall remain unchanged in the absence of satisfactory evidence to the contrary. A student wishing to apply for a change in classification shall reduce such evidence to writing and file it with the institution. In any case involving an application for a change from nonresident to resident status, the burden of proof shall rest with the applicant. Any change in classification, either nonresident to resident, or the reverse, shall be based upon written evidence maintained in the files of the institution and, if approved, shall take effect the semester or quarter such evidence was filed with the institution: PROVIDED, That applications for a change in classification shall be accepted up to the thirtieth calendar day following the first day of instruction of the quarter or semester for which application is made. [2011 1st sp.s. c 11 § 149; 1989 c 175 § 79; 1985 c 370 § 63; 1982 1st ex.s. c 27 § 2; 1979 ex.s. c 15 § 1; 1972 ex.s. c 149 § 2; 1971 ex.s. c 373 § 3.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.15.015 Classification as resident or nonresident student—Rules. (Effective July 1, 2012.) The state's institutions, with the advice of the attorney general, shall adopt rules and regulations to be used by the state's institutions for determining a student's resident and nonresident status and for recovery of fees for improper classification of residency. [2011 1st sp.s. c 11 § 150; 1985 c 370 § 64; 1982 1st ex.s. c 37 § 4.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.15.031 "Operating fees"—Defined—Disposition. (1) The term "operating fees" as used in this chapter shall include the fees, other than building fees, charged all students registering at the state's colleges and universities but shall not include fees for short courses, self-supporting degree credit programs and courses, marine station work, experimental station work, correspondence or extension courses, and individual instruction and student deposits or rentals, disciplinary and library fines, which colleges and universities shall have the right to impose, laboratory, gymnasium, health, technology and student activity fees, or fees, charges, rentals, and other income derived from any or all revenue producing lands, buildings and facilities of the colleges or universities heretofore or hereafter acquired, constructed or installed, including but not limited to income from rooms, dormitories, dining rooms, hospitals, infirmaries, housing or student activity buildings, vehicular parking facilities, land, or the appurtenances thereon, or such other special fees as may be established by any college or university board of trustees or regents from time to time. All moneys received as operating fees at any institution of higher education shall

be deposited in a local account containing only operating fees revenue and related interest: PROVIDED, That a minimum of five percent of operating fees shall be retained by the four-year institutions of higher education that increase tuition for resident undergraduate students above assumed tuition increases in the omnibus appropriations act, a minimum of four percent of operating fees shall be retained by four-year institutions of higher education that do not increase tuition for resident undergraduates above assumed increases in the omnibus appropriations act, and a minimum of three and one-half percent of operating fees shall be retained by the community and technical colleges for the purposes of RCW 28B.15.820. At least thirty percent of operating fees required to be retained by the four-year institutions for purposes of RCW 28B.15.820 shall be used only for the purposes of RCW 28B.15.820(10).

(2) In addition to the three and one-half percent of operating fees retained by the institutions under subsection (1) of this section, up to three percent of operating fees charged to students at community and technical colleges shall be transferred to the community and technical college innovation account for the implementation of the college board's strategic technology plan in RCW 28B.50.515. The percentage to be transferred to the community and technical college innovation account shall be determined by the college board each year but shall not exceed three percent of the operating fees collected each year.

(3) Local operating fee accounts shall not be subject to appropriation by the legislature or allotment procedures under chapter 43.88 RCW. [2011 1st sp.s. c 10 § 2; 2011 c 274 § 2; 2003 c 232 § 2; 1996 c 142 § 2; 1995 1st sp.s. c 9 § 2. Prior: 1993 sp.s. c 18 § 6; 1993 c 379 § 201; 1987 c 15 § 2; prior: 1985 c 390 § 13; 1985 c 356 § 2; 1982 1st ex.s. c 37 § 12; 1981 c 257 § 1; 1979 c 151 § 14; 1977 ex.s. c 331 § 3; 1971 ex.s. c 279 § 2.]

Reviser's note: This section was amended by 2011 c 274 § 2 and by 2011 1st sp.s. c 10 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2011 1st sp.s. c 10: "(1) The legislature finds that in the knowledge-based, globally interdependent economy of the twenty-first century, postsecondary education is the most indispensable form of currency. Public institutions of higher education are drivers of economic growth and job creation and incubators for innovation. An educated citizenry is a critical component of our democracy, and a commitment to provide public funding for public higher education institutions is imperative. At the same time, the legislature finds that Washington state is experiencing a profound structural shift in the funding of higher education. State support has declined dramatically over the past twenty years, thereby necessitating increases in tuition to supplant the support of higher education from general taxpayers. The problem faced by all stakeholders - students and their families, institutions, and policymakers - is a growing reliance on tuition dollars and a reduced reliance on state support. At the same time, there is insufficient visibility into the use of locally retained tuition dollars. There is little transparency regarding whether increasing tuition dollars gives students, their families, and Washington taxpayers a high-value return on investment. Responding to those concerns, and recognizing that tuition-setting authority is interrelated to a wide variety of factors including state funding, student aid, admissions, dual credit, educational effectiveness, regulatory and reporting requirements, and other policies and practices, this higher education opportunity act directs a number of higher education system reforms.

(2) It is the intent of the legislature to:

(a) Ensure that tuition dollars are spent to improve student access, affordability, and the quality of education;

(b) Establish a clear nexus between tuition dollars and improved productivity and greater accountability of public institutions of higher education;

(c) Create a modern and robust higher education financial system that funds outcomes and results rather than input and process; and

(d) Continue a commitment to public funding of higher education through state appropriations that are essential for providing access, affordability, and quality in higher education for all students across the state.

(3)(a) It is the intent of the legislature to set goals for four-year institutions of higher education to increase the number of students who earn baccalaureate degrees, while maintaining quality, and achieve the following initial degree completion targets by 2018:

(i) Increasing the number of bachelor's degrees earned by Washington's resident students from the 2009-10 academic year levels by at least six thousand degrees completed or by twenty-seven percent;

(ii) Consistent with the priority for expanding the number of enrollments and degrees in the fields of engineering, technology, biotechnology, sciences, computer sciences, and mathematics, at least two thousand of the additional degrees under this subsection (3)(a) would be awarded in the areas of science, which includes agriculture and natural resources, biology and biomedical sciences, computer and information sciences, engineering and engineering technologies, health professions and clinical sciences, mathematics and statistics, and physical sciences and science technologies; and

(iii) Attaining parity in degree attainment for students from underrepresented groups, which would mean that at least nineteen percent of the degrees awarded would include students who are low-income or are the first in their families to attend college.

(b) It is the intent of the legislature that the bachelor degree completion targets in (a) of this subsection be updated every two years based upon the state's changing population and economic needs and that targets be set for five-year periods following the 2018 target.

(c) It is the intent of the legislature to urge four-year institutions of higher education to place the highest priority on achieving the degree completion targets under (a) of this subsection. The legislature intends to examine the strategies used and progress made by institutions of higher education to meet the targets in addition to evidence of increased cost-effectiveness and efficiency. The legislature recognizes that individual institutions develop their campus goals recognizing the role of their campus as part of the system of public higher education and may implement a variety of innovative methods to achieve these goals." [2011 1st sp.s. c 10 § 1.]

Short title—2011 1st sp.s. c 10: "This act may be known and cited as the higher education opportunity act." [2011 1st sp.s. c 10 § 30.]

Finding—Intent—2011 c 274: See note following RCW 28B.50.515.

Finding—Intent—2003 c 232: "The legislature finds that, as a partner in financing public higher education with students and parents who pay tuition and fees, periodic increases in state funding, state financial aid, and tuition must be authorized to provide high quality higher education for the citizens of Washington. It is the intent of the legislature to address higher education through a cooperative bipartisan effort that includes the legislative and executive branches of government, parents, students, educators, as well as business, labor, and community leaders. The legislature recognizes the importance of keeping the public commitment to public higher education and will continue searching for policies that halt the trend for the growth in tuition revenue to outpace the revenue provided by the state. The legislature believes that a well-educated citizenry is essential to both the private and the public good. The economic and civic health of the state require both an educated citizenry and a well-trained workforce. The six-year time limitation authorizing the governing boards to establish tuition rates for all students other than undergraduate resident students will give the legislature, the governor, and the higher education institutions an opportunity to determine whether this policy achieves the goal of maintaining quality and access for all who are eligible for and can benefit from a higher education. Using data from six years of this tuition policy, the state will be able to identify options for long-term funding of higher education including not only tuition but general fund and financial aid sources." [2003 c 232 § 1.]

Intent—Purpose—1995 1st sp.s. c 9: "It is the intent of the legislature to address higher education funding through a cooperative bipartisan effort that includes the legislative and executive branches of government, parents, students, educators, and concerned citizens. This effort will begin in 1995, with the results providing the basis for discussion during the 1996 legislative session for future decisions and final legislative action in 1997.

The purpose of this act is to provide tuition increases for public institutions of higher education as a transition measure until final action is taken in 1997." [1995 1st sp.s. c 9 § 1.]

***Reviser's note:** RCW 28B.15.824 was repealed by 1993 c 379 § 206 and by 1993 sp.s. c 18 § 14, effective July 1, 1993.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Additional notes found at www.leg.wa.gov

28B.15.067 Tuition fees—Established. (1) Tuition fees shall be established under the provisions of this chapter.

(2) Beginning in the 2011-12 academic year, reductions or increases in full-time tuition fees shall be as provided in the omnibus appropriations act for resident undergraduate students at community and technical colleges. The governing boards of the state universities, regional universities, and The Evergreen State College; and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including nonresident students, summer school students, and students in other self-supporting degree programs. Percentage increases in full-time tuition may exceed the fiscal growth factor. The state board for community and technical colleges may pilot or institute differential tuition models. The board may define scale, scope, and rationale for the models.

(3)(a) Beginning with the 2011-12 academic year and through the end of the 2014-15 academic year, the governing boards of the state universities, the regional universities, and The Evergreen State College may reduce or increase full-time tuition fees for all students, including summer school students and students in other self-supporting degree programs. Percentage increases in full-time tuition fees may exceed the fiscal growth factor. Reductions or increases may be made for all or portions of an institution's programs, campuses, courses, or students.

(b) Prior to reducing or increasing tuition for each academic year, the governing boards of the state universities, the regional universities, and The Evergreen State College shall consult with existing student associations or organizations with student undergraduate and graduate representatives regarding the impacts of potential tuition increases. Governing boards shall be required to provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(c) Prior to reducing or increasing tuition for each academic year, the state board for community and technical college system shall consult with existing student associations or organizations with undergraduate student representation regarding the impacts of potential tuition increases. The state board for community and technical colleges shall provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(4) Beginning with the 2015-16 academic year through the 2018-19 academic year, the governing boards of the state universities, regional universities, and The Evergreen State College may set tuition for resident undergraduates as follows:

(a) If state funding for a college or university falls below the state funding provided in the operating budget for fiscal year 2011, the governing board may increase tuition up to the limits set in (d) of this subsection, reduce enrollments, or both;

(b) If state funding for a college or university is at least at the level of state funding provided in the operating budget

for fiscal year 2011, the governing board may increase tuition up to the limits set in (d) of this subsection and shall continue to at least maintain the actual enrollment levels for fiscal year 2011 or increase enrollments as required in the omnibus appropriations act; and

(c) If state funding is increased so that combined with resident undergraduate tuition the sixtieth percentile of the total per-student funding at similar public institutions of higher education in the global challenge states under RCW 28B.15.068 is exceeded, the governing board shall decrease tuition by the amount needed for the total per-student funding to be at the sixtieth percentile under RCW 28B.15.068;

(d) The amount of tuition set by the governing board for an institution under this subsection (4) may not exceed the sixtieth percentile of the resident undergraduate tuition of similar public institutions of higher education in the global challenge states.

(5) The tuition fees established under this chapter shall not apply to high school students enrolling in participating institutions of higher education under RCW 28A.600.300 through 28A.600.400.

(6) The tuition fees established under this chapter shall not apply to eligible students enrolling in a dropout reengagement program through an interlocal agreement between a school district and a community or technical college under RCW 28A.175.100 through 28A.175.110.

(7) The tuition fees established under this chapter shall not apply to eligible students enrolling in a community or technical college participating in the pilot program under RCW 28B.50.534 for the purpose of obtaining a high school diploma.

(8) Beginning in the 2019-20 academic year, reductions or increases in full-time tuition fees for resident undergraduates at four-year institutions of higher education shall be as provided in the omnibus appropriations act. [2011 1st sp.s. c 10 § 3; 2010 c 20 § 7; 2009 c 574 § 1; 2007 c 355 § 7; 2006 c 161 § 6; 2003 c 232 § 4; 1997 c 403 § 1; 1996 c 212 § 1; 1995 1st sp.s. c 9 § 4; 1992 c 231 § 4; 1990 1st ex.s. c 9 § 413; 1986 c 42 § 1; 1985 c 390 § 15; 1982 1st ex.s. c 37 § 15; 1981 c 257 § 2.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

Intent—2010 c 20: See note following RCW 28A.175.100.

Finding—Intent—2007 c 355: See note following RCW 28B.50.534.

Effective date—2006 c 161: See note following RCW 49.04.160.

Finding—Intent—2003 c 232: See note following RCW 28B.15.031.

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

Additional notes found at www.leg.wa.gov

28B.15.068 Estimates of per-student funding level and tuition—Reports—"Global challenge states"—Communication regarding available tax credits—Tuition mitigation plans (as amended by 2011 1st sp.s. c 10). (1) ((Beginning with the 2007-08 academic year and ending with the 2016-17 academic year, tuition fees charged to full-time resident undergraduate students, except in academic years 2009-10 and 2010-11, may increase no greater than seven percent over the previous academic year in any institution of higher education. Annual reductions or increases in full-time tuition fees for resident undergraduate students shall be as provided in the omnibus appropriations act, within the seven percent increase limit established in this section. For academic years 2009-10 and 2010-11 the omnibus appropria-

tions act may provide tuition increases greater than seven percent. To the extent that state appropriations combined with tuition and fee revenues are insufficient to achieve the total per-student funding goals established in subsection (2) of this section, the legislature may revisit state appropriations, authorized enrollment levels, and changes in tuition fees for any given fiscal year.

(2) The state shall adopt as its goal total per-student funding levels, from state appropriations plus tuition and fees, of at least the sixtieth percentile of total per-student funding at similar public institutions of higher education in the global challenge states. In defining comparable per-student funding levels, the office of financial management shall adjust for regional cost-of-living differences; for differences in program offerings and in the relative mix of lower division, upper division, and graduate students; and for accounting and reporting differences among the comparison institutions. The office of financial management shall develop a funding trajectory for each four-year institution of higher education and for the community and technical college system as a whole that when combined with tuition and fees revenue allows the state to achieve its funding goal for each four-year institution and the community and technical college system as a whole no later than fiscal year 2017. The state shall not reduce enrollment levels below fiscal year 2007 budgeted levels in order to improve or alter the per-student funding amount at any four-year institution of higher education or the community and technical college system as a whole. The state recognizes that each four-year institution of higher education and the community and technical college system as a whole have different funding requirements to achieve desired performance levels, and that increases to the total per-student funding amount may need to exceed the minimum funding goal.

(3)) By September 1st of each year beginning in ((2008)) 2011, the office of financial management shall report to the governor, the higher education coordinating board, and appropriate committees of the legislature with updated estimates of:

(a) The total per-student funding level that represents the sixtieth percentile of funding for ((comparable)) similar institutions of higher education in the global challenge states((, and the progress toward that goal that was made for each of the public institutions of higher education)); and

(b) The tuition that represents the sixtieth percentile of resident undergraduate tuition for similar institutions of higher education in the global challenge states.

((4)) (2) As used in this section, "global challenge states" are the top performing states on the new economy index published by the progressive policy institute as of July 22, 2007. The new economy index ranks states on indicators of their potential to compete in the new economy. At least once every five years, the office of financial management shall determine if changes to the list of global challenge states are appropriate. The office of financial management shall report its findings to the governor and the legislature.

((5)) During the 2009-10 and the 2010-11 academic years, institutions of higher education shall include information on their billing statements notifying students of tax credits available through the American opportunity tax credit provided in the American recovery and reinvestment act of 2009. (3) Institutions of higher education, in collaboration with relevant student associations, shall aim to have all students who can benefit from available tax credits that mitigate the costs of higher education take advantage of these opportunities. These tax credits include the American opportunity tax credit provided in the American recovery and reinvestment act of 2009, the lifetime learning credit, and other relevant tax credits for as long as they are available.

(4)(a) Institutions shall make every effort to communicate to students and their families the benefits of such tax credits and provide assistance to students and their families on how to apply.

(b) Information about relevant tax credits shall, to the greatest extent possible, be incorporated into financial aid counseling, admission information, and individual billing statements.

(c) Institutions shall, to the greatest extent possible, use all means of communication, including but not limited to web sites, online catalogues, admission and registration forms, mass email messaging, social media, and outside marketing to ensure information about relevant tax credits is visible and compelling, and reaches the maximum amount of student and families that can benefit.

(5) In the event that the economic value of the American opportunity tax credit is reduced or expires at any time before December 31, 2012, institutions of higher education shall:

(a) Develop an updated tuition mitigation plan established under RCW 28B.15.102 for the purpose of minimizing, to the greatest extent possible, the increase in net cost of tuition or total cost of attendance for students resulting from any such change. This plan shall include the methods specified by the

four-year institution of higher education to avoid adding additional loan debt burdens to students regardless of the source of such loans;

(b) Report to the governor and the relevant committees of the legislature on their plans to adjust their tuition mitigation plans no later than ninety days after any such change to the American opportunity tax credit. [2011 1st sp.s. c 10 § 7; 2009 c 540 § 1; 2007 c 151 § 1.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

28B.15.068 Tuition fees increase limitations—State funding goals—Reports—"Global challenge states"—Notification of availability of American opportunity tax credit (as amended by 2011 1st sp.s. c 50).

(1) Beginning with the 2007-08 academic year and ending with the 2016-17 academic year, tuition fees charged to full-time resident undergraduate students, except in academic years 2009-10 and 2010-11, may increase no greater than seven percent over the previous academic year in any institution of higher education. Annual reductions or increases in full-time tuition fees for resident undergraduate students shall be as provided in the omnibus appropriations act, within the seven percent increase limit established in this section. For academic years 2009-10 and 2010-11 the omnibus appropriations act may provide tuition increases greater than seven percent. To the extent that state appropriations combined with tuition and fee revenues are insufficient to achieve the total per-student funding goals established in subsection (2) of this section, the legislature may revisit state appropriations, authorized enrollment levels, and changes in tuition fees for any given fiscal year. In order to facilitate the full implementation of chapter 10, Laws of 2011 1st sp. sess. for the 2011-12 academic year and thereafter, the institutions of higher education are authorized to adopt tuition levels that are less than, equal to, or greater than the tuition levels assumed in the omnibus appropriations act, subject to the conditions and limitations in this chapter and the omnibus appropriations act.

(2) The state shall adopt as its goal total per-student funding levels, from state appropriations plus tuition and fees, of at least the sixtieth percentile of total per-student funding at similar public institutions of higher education in the global challenge states. In defining comparable per-student funding levels, the office of financial management shall adjust for regional cost-of-living differences; for differences in program offerings and in the relative mix of lower division, upper division, and graduate students; and for accounting and reporting differences among the comparison institutions. The office of financial management shall develop a funding trajectory for each four-year institution of higher education and for the community and technical college system as a whole that when combined with tuition and fees revenue allows the state to achieve its funding goal for each four-year institution and the community and technical college system as a whole no later than fiscal year 2017. The state shall not reduce enrollment levels below fiscal year 2007 budgeted levels in order to improve or alter the per-student funding amount at any four-year institution of higher education or the community and technical college system as a whole. The state recognizes that each four-year institution of higher education and the community and technical college system as a whole have different funding requirements to achieve desired performance levels, and that increases to the total per-student funding amount may need to exceed the minimum funding goal.

(3) By September 1st of each year beginning in 2008, the office of financial management shall report to the governor, the higher education coordinating board, and appropriate committees of the legislature with updated estimates of the total per-student funding level that represents the sixtieth percentile of funding for comparable institutions of higher education in the global challenge states, and the progress toward that goal that was made for each of the public institutions of higher education.

(4) As used in this section, "global challenge states" are the top performing states on the new economy index published by the progressive policy institute as of July 22, 2007. The new economy index ranks states on indicators of their potential to compete in the new economy. At least once every five years, the office of financial management shall determine if changes to the list of global challenge states are appropriate. The office of financial management shall report its findings to the governor and the legislature.

(5) During the 2009-10 and the 2010-11 academic years, institutions of higher education shall include information on their billing statements notifying students of tax credits available through the American opportunity tax credit provided in the American recovery and reinvestment act of 2009. [2011 1st sp.s. c 50 § 928; 2009 c 540 § 1; 2007 c 151 § 1.]

Reviser's note: RCW 28B.15.068 was amended twice during the 2011 legislative session, each without reference to the other. For rule of construc-

tion concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Captions not law—2007 c 151: "Captions used in this act are not any part of the law." [2007 c 151 § 3.]

28B.15.0681 Information provided to students on tuition billing statements or web site—Notice of federal educational tax credits. (1) In addition to the requirement in *RCW 28B.76.300(4), institutions of higher education shall disclose to their undergraduate resident students on the tuition billing statement, in dollar figures for a full-time equivalent student:

- (a) The full cost of instruction;
- (b) The amount collected from student tuition and fees; and
- (c) The difference between the amounts for the full cost of instruction and the student tuition and fees.

(2) The tuition billing statement shall note that the difference between the cost and tuition under subsection (1)(c) of this section was paid by state tax funds and other moneys.

(3) Beginning in the 2010-11 academic year, the amount determined in subsection (1)(c) of this section shall be labeled an "opportunity pathway" on the tuition billing statement.

(4) Beginning in the 2010-11 academic year, institutions of higher education shall label financial aid awarded to resident undergraduate students as an "opportunity pathway" on the tuition billing statement or financial aid award notification. Aid granted to students outside of the financial aid package provided through the institution of higher education and loans provided by the federal government are not subject to the labeling provisions in this subsection. All other aid from all sources including federal, state, and local governments, local communities, nonprofit and for-profit organizations, and institutions of higher education must be included. The disclosure requirements specified in this section do not change the source, award amount, student eligibility, or student obligations associated with each award. Institutions of higher education retain the ability to customize their tuition billing statements to inform students of the assistance source, amount, and type so long as provisions of this section are also fulfilled.

(5) Institutions of higher education shall provide the following information to all undergraduate resident students either on the tuition billing statement or via a link to a web site detailing the following information:

(a) The sources of all institutional revenue received during the prior academic or fiscal year, including but not limited to state, federal, local, and private sources;

(b) The uses of tuition revenue collected during the prior academic or fiscal year by program category as determined by the office of financial management; and

(c) The accountability and performance data under RCW 28B.76.270.

(6) The tuition billing statement disclosures shall be in twelve-point type and boldface type where appropriate.

(7) All tuition billing statements or financial aid award notifications at institutions of higher education must notify resident undergraduate students of federal tax credits related

to higher education for which they may be eligible. [2011 1st sp.s. c 10 § 4; 2009 c 215 § 6; 2007 c 151 § 2.]

***Reviser's note:** RCW 28B.76.300 was repealed by 2011 1st sp.s. c 11 § 245.

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

Findings—Intent—Effective date—2009 c 215: See notes following RCW 28B.92.030.

Captions not law—2007 c 151: See note following RCW 28B.15.068.

28B.15.100 Tuition and fees set by individual institutions—Limitations—Tuition and fees for certain part-time, additional time, and out-of-state students. (Effective until July 1, 2012.) (1) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges shall charge to and collect from each of the students registering at the particular institution for any quarter or semester such tuition fees and services and activities fees, and other fees as such board shall in its discretion determine. For the governing boards of the state universities, the regional universities, and The Evergreen State College, the total of all fees shall be rounded to the nearest whole dollar amount: PROVIDED, That such tuition fees shall be established in accordance with RCW 28B.15.067.

(2) Part-time students shall be charged tuition and services and activities fees proportionate to full-time student rates established for residents and nonresidents: PROVIDED, That except for students registered at community colleges, students registered for fewer than two credit hours shall be charged tuition and services and activities fees at the rate established for two credit hours: PROVIDED FURTHER, That, subject to the limitations of RCW 28B.15.910, residents of Idaho or Oregon who are enrolled in community college district number twenty for six or fewer credits during any quarter or semester may be exempted from payment of all or a portion of the nonresident tuition fees differential upon a declaration by the higher education coordinating board that it finds Washington residents from the community college district are afforded substantially equivalent treatment by such other states.

(3) Full-time students registered for more than eighteen credit hours shall be charged an additional operating fee for each credit hour in excess of eighteen hours at the applicable established per credit hour tuition fee rate for part-time students: PROVIDED, That, subject to the limitations of RCW 28B.15.910, the governing boards of the state universities and the community colleges may exempt all or a portion of the additional charge, for students who are registered exclusively in first professional programs in medicine, dental medicine, veterinary medicine, doctor of pharmacy, or law, or who are registered exclusively in required courses in vocational preparatory programs. [2011 c 274 § 5; 2003 c 232 § 6; 1999 c 321 § 2; 1998 c 75 § 1; 1995 1st sp.s. c 9 § 8; 1993 sp.s. c 18 § 7; 1992 c 231 § 6. Prior: 1985 c 390 § 18; 1985 c 370 § 67; 1982 1st ex.s. c 37 § 11; 1981 c 257 § 5; 1977 ex.s. c 322 § 2; 1977 ex.s. c 169 § 36; 1971 ex.s. c 279 § 5; 1969 ex.s. c 223 § 28B.15.100; prior: (i) 1967 ex.s. c 8 § 31, part. Formerly RCW 28.85.310, part. (ii) 1963 c 181 § 1, part; 1961 ex.s. c 10 § 1, part; 1959 c 186 § 1, part; 1947 c 243 § 1, part; 1945 c 187 § 1, part; 1933 c 169 § 1, part; 1931

c 48 § 1, part; 1921 c 139 § 1, part; 1919 c 63 § 1, part; 1915 c 66 § 2, part; RRS § 4546, part. Formerly RCW 28.77.030, part. (iii) 1963 c 180 § 1, part; 1961 ex.s. c 11 § 1, part; 1949 c 73 § 1, part; 1931 c 49 § 1, part; 1921 c 164 § 1, part; Rem. Supp. 1949 § 4569, part. Formerly RCW 28.80.030, part. (iv) 1967 c 47 § 10, part; 1965 ex.s. c 147 § 1, part; 1963 c 143 § 1, part; 1961 ex.s. c 13 § 3, part. Formerly RCW 28.81.080, part.]

Finding—Intent—2011 c 274: See note following RCW 28B.50.515.

Finding—Intent—2003 c 232: See note following RCW 28B.15.031.

Intent—1999 c 321: "The legislature recognizes that certain tuition policies may have an adverse impact on the unique role of community colleges.

Therefore, it is the intent of the legislature to eliminate impediments to the ability of community colleges to meet the diverse needs of students and business interests." [1999 c 321 § 1.]

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

Additional notes found at www.leg.wa.gov

28B.15.100 Tuition and fees set by individual institutions—Limitations—Tuition and fees for certain part-time, additional time, and out-of-state students. (Effective July 1, 2012.) (1) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges shall charge to and collect from each of the students registering at the particular institution for any quarter or semester such tuition fees and services and activities fees, and other fees as such board shall in its discretion determine. For the governing boards of the state universities, the regional universities, and The Evergreen State College, the total of all fees shall be rounded to the nearest whole dollar amount: PROVIDED, That such tuition fees shall be established in accordance with RCW 28B.15.067.

(2) Part-time students shall be charged tuition and services and activities fees proportionate to full-time student rates established for residents and nonresidents: PROVIDED, That except for students registered at community colleges, students registered for fewer than two credit hours shall be charged tuition and services and activities fees at the rate established for two credit hours: PROVIDED FURTHER, That, subject to the limitations of RCW 28B.15.910, residents of Idaho or Oregon who are enrolled in community college district number twenty for six or fewer credits during any quarter or semester may be exempted from payment of all or a portion of the nonresident tuition fees differential upon a declaration by the office of student financial assistance that it finds Washington residents from the community college district are afforded substantially equivalent treatment by such other states.

(3) Full-time students registered for more than eighteen credit hours shall be charged an additional operating fee for each credit hour in excess of eighteen hours at the applicable established per credit hour tuition fee rate for part-time students: PROVIDED, That, subject to the limitations of RCW 28B.15.910, the governing boards of the state universities and the community colleges may exempt all or a portion of the additional charge, for students who are registered exclusively in first professional programs in medicine, dental medicine, veterinary medicine, doctor of pharmacy, or law, or who are registered exclusively in required courses in voca-

tional preparatory programs. [2011 1st sp.s. c 11 § 151; 2011 c 274 § 5; 2003 c 232 § 6; 1999 c 321 § 2; 1998 c 75 § 1; 1995 1st sp.s. c 9 § 8; 1993 sp.s. c 18 § 7; 1992 c 231 § 6. Prior: 1985 c 390 § 18; 1985 c 370 § 67; 1982 1st ex.s. c 37 § 11; 1981 c 257 § 5; 1977 ex.s. c 322 § 2; 1977 ex.s. c 169 § 36; 1971 ex.s. c 279 § 5; 1969 ex.s. c 223 § 28B.15.100; prior: (i) 1967 ex.s. c 8 § 31, part. Formerly RCW 28.85.310, part. (ii) 1963 c 181 § 1, part; 1961 ex.s. c 10 § 1, part; 1959 c 186 § 1, part; 1947 c 243 § 1, part; 1945 c 187 § 1, part; 1933 c 169 § 1, part; 1931 c 48 § 1, part; 1921 c 139 § 1, part; 1919 c 63 § 1, part; 1915 c 66 § 2, part; RRS § 4546, part. Formerly RCW 28.77.030, part. (iii) 1963 c 180 § 1, part; 1961 ex.s. c 11 § 1, part; 1949 c 73 § 1, part; 1931 c 49 § 1, part; 1921 c 164 § 1, part; Rem. Supp. 1949 § 4569, part. Formerly RCW 28.80.030, part. (iv) 1967 c 47 § 10, part; 1965 ex.s. c 147 § 1, part; 1963 c 143 § 1, part; 1961 ex.s. c 13 § 3, part. Formerly RCW 28.81.080, part.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Finding—Intent—2011 c 274: See note following RCW 28B.50.515.

Finding—Intent—2003 c 232: See note following RCW 28B.15.031.

Intent—1999 c 321: "The legislature recognizes that certain tuition policies may have an adverse impact on the unique role of community colleges.

Therefore, it is the intent of the legislature to eliminate impediments to the ability of community colleges to meet the diverse needs of students and business interests." [1999 c 321 § 1.]

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

Additional notes found at www.leg.wa.gov

28B.15.101 Authority to modify tuition rates—Performance-based measures and goals—Institutional performance plans. (1) To ensure institutional quality, promote access, and advance the public mission of the state universities, the regional universities, and The Evergreen State College, the authority to increase or decrease tuition rates shall be considered within the context of performance-based measures and goals for each state university, regional university, and The Evergreen State College. By September 1, 2011, and September 1st every two years thereafter, the state universities, the regional universities, and The Evergreen State College shall each negotiate an institutional performance plan with the office of financial management that includes expected outcomes that must be achieved by each institution in the subsequent biennium.

(2) At a minimum, an individual institutional performance plan must include but is not limited to the following expected outcomes:

- (a) Time and credits to degree;
- (b) Retention and success of students from low-income, diverse, or underrepresented communities;
- (c) Baccalaureate degree production for resident students; and
- (d) Degree production in high-employer demand programs of study and critical state need areas. [2011 1st sp.s. c 10 § 5.]

Interagency work group—2011 1st sp.s. c 10: "The office of financial management shall work with the appropriate state agencies as determined by the office of financial management, and the council of presidents to convene an interagency work group to develop and implement improved administra-

tion and management practices that enhance the efficiency and effectiveness of operations throughout higher education campuses. The council of presidents shall appoint a lead higher education institution to provide administrative support to the work group within that institution's current resources. The work group shall report to the legislature by November 15, 2012, and November 15, 2013, on its progress, anticipated outcomes, policy recommendations, and performance measures for demonstrating achievement of improved efficiencies and effectiveness." [2011 1st sp.s. c 10 § 27.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

28B.15.102 Institutional tuition increases—Financial aid offset—Reports—Resident freshman undergraduate enrollment at the University of Washington, Seattle campus. (1) Beginning with the 2011-12 academic year, any four-year institution of higher education that increases tuition beyond levels assumed in the omnibus appropriations act is subject to the financial aid requirements included in this section and shall remain subject to these requirements through the 2018-19 academic year.

(2) Beginning July 1, 2011, each four-year institution of higher education that raises tuition beyond levels assumed in the omnibus appropriations act shall, in a manner consistent with the goal of enhancing the quality of and access to their institutions, provide financial aid to offset full-time tuition fees for resident undergraduate students as follows:

(a) Subtract from the full-time tuition fees an amount that is equal to the maximum amount of a state need grant award that would be given to an eligible student with a family income at or below fifty percent of the state's median family income as determined by the higher education coordinating board; and

(b) Offset the remainder as follows:

(i) Students with demonstrated need whose family incomes are at or below fifty percent of the state's median family income shall receive financial aid equal to one hundred percent of the remainder if an institution's full-time tuition fees for resident undergraduate students is five percent or greater of the state's median family income for a family of four as provided by the higher education coordinating board;

(ii) Students with demonstrated need whose family incomes are greater than fifty percent and no more than seventy percent of the state's median family income shall receive financial aid equal to seventy-five percent of the remainder if an institution's full-time tuition fees for resident undergraduate students is ten percent or greater of the state's median family income for a family of four as provided by the higher education coordinating board;

(iii) Students with demonstrated need whose family incomes exceed seventy percent and are less than one hundred percent of the state's median family income shall receive financial aid equal to fifty percent of the remainder if an institution's full-time tuition fees for resident undergraduate students is fifteen percent or greater of the state's median family income for a family of four as provided by the higher education coordinating board; and

(iv) Students with demonstrated need whose family incomes are at or exceed one hundred percent and are no more than one hundred twenty-five percent of the state's median family income shall receive financial aid equal to twenty-five percent of the remainder if an institution's full-time tuition fees for resident undergraduate students is

twenty percent or greater of the state's median family income for a family of four as provided by the higher education coordinating board.

(3) The financial aid required in subsection (2) of this section shall:

(a) Be reduced by the amount of other financial aid awards, not including the state need grant;

(b) Be prorated based on credit load; and

(c) Only be provided to students up to demonstrated need.

(4) Financial aid sources and methods may be:

(a) Tuition revenue or locally held funds;

(b) Tuition waivers created by a four-year institution of higher education for the specific purpose of serving low and middle-income students; or

(c) Local financial aid programs.

(5) Use of tuition waivers as specified in subsection (4)(b) of this section shall not be included in determining total state tuition waiver authority as defined in RCW 28B.15.910.

(6) By August 15, 2012, and August 15th every year thereafter, four-year institutions of higher education shall report to the governor and relevant committees of the legislature on the effectiveness of the various sources and methods of financial aid in mitigating tuition increases. A key purpose of these reports is to provide information regarding the results of the decision to grant tuition-setting authority to the four-year institutions of higher education and whether tuition setting authority should continue to be granted to the institutions or revert back to the legislature after consideration of the impacts on students, including educational access, affordability, and quality. These reports shall include:

(a) The amount of additional financial aid provided to middle-income and low-income students with demonstrated need in the aggregate and per student;

(b) An itemization of the sources and methods of financial aid provided by the four-year institution of higher education in the aggregate and per student;

(c) An analysis of the combined impact of federal tuition tax credits and financial aid provided by the institution of higher education on the net cost to students and their families resulting from tuition increases;

(d) In cases where tuition increases are greater than those assumed in the omnibus appropriations act at any four-year institution of higher education, the institution must include an explanation in its report of why this increase was necessary and how the institution will mitigate the effects of the increase. The institution must include in this section of its report a plan and specific timelines; and

(e) An analysis of changes in resident student enrollment patterns, participation rates, graduation rates, and debt load, by race and ethnicity, gender, state and county of origin, age, and socioeconomic status, and a plan to mitigate effects of reduced diversity due to tuition increases. This analysis shall include disaggregated data for resident students in the following income brackets:

(i) Up to seventy percent of the median family income;

(ii) Between seventy-one percent and one hundred twenty-five percent of the median family income; and

(iii) Above one hundred twenty-five percent of the median family income.

(7) Beginning in the 2012-13 academic year, the University of Washington shall enroll during each academic year at least the same number of resident freshman undergraduate students at the Seattle campus, as defined in RCW 28B.15.012, as enrolled during the 2009-10 academic year. This requirement shall not apply to nonresident undergraduate and graduate and professional students. [2011 1st sp.s. c 10 § 6.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

28B.15.210 Fees—University of Washington—Disposition of building fees. Within thirty-five days from the date of collection thereof, all building fees at the University of Washington, including building fees to be charged students registering in the schools of medicine and dentistry, shall be paid into the state treasury and credited as follows:

One-half or such larger portion as may be necessary to prevent a default in the payments required to be made out of the bond retirement fund to the "University of Washington bond retirement fund" and the remainder thereof to the "University of Washington building account." The sum so credited to the University of Washington building account shall be used exclusively for the purpose of erecting, altering, maintaining, equipping, or furnishing buildings, and for certificates of participation under chapter 39.94 RCW, except for any sums transferred as authorized in RCW 28B.20.725(3). The sum so credited to the University of Washington bond retirement fund shall be used for the payment of principal of and interest on bonds outstanding as provided by chapter 28B.20 RCW except for any sums transferred as authorized in RCW 28B.20.725(5). During the 2011-2013 biennium, sums credited to the University of Washington building account shall also be used for routine facility maintenance and utility costs. [2011 1st sp.s. c 48 § 7022. Prior: 2009 c 499 § 1; 2009 c 497 § 6019; 1985 c 390 § 20; 1969 ex.s. c 223 § 28B.15.210; prior: 1963 c 224 § 1; 1959 c 193 § 7; 1957 c 254 § 6; 1947 c 243 § 2; 1945 c 187 § 2; 1939 c 156 § 1; 1933 c 169 § 2; 1921 c 139 § 2; 1919 c 63 § 2; 1915 c 66 § 3; Rem. Supp. 1947 § 4547. Formerly RCW 28.77.040.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 497: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2009], except for sections 6020, 6021, and 6024 through 6027 of this act which take effect July 1, 2009." [2009 c 497 § 6055.]

28B.15.310 Fees—Washington State University—Disposition of building fees. Within thirty-five days from the date of collection thereof, all building fees shall be paid and credited as follows: To the Washington State University bond retirement fund, one-half or such larger portion as may be necessary to prevent a default in the payments required to be made out of such bond retirement fund; and the remainder thereof to the Washington State University building account.

The sum so credited to the Washington State University building account shall be expended by the board of regents for buildings, equipment, or maintenance on the campus of Washington State University as may be deemed most advis-

able and for the best interests of the university, and for certificates of participation under chapter 39.94 RCW, except for any sums transferred as authorized by law. During the 2011-2013 biennium, sums credited to the Washington State University building account shall also be used for routine facility maintenance and utility costs. Expenditures so made shall be accounted for in accordance with existing law and shall not be expended until appropriated by the legislature.

The sum so credited to the Washington State University bond retirement fund shall be used to pay and secure the payment of the principal of and interest on building bonds issued by the university, except for any sums which may be transferred out of such fund as authorized by law. [2011 1st sp.s. c 48 § 7023. Prior: 2009 c 499 § 2; 2009 c 497 § 6020; 1985 c 390 § 22; 1969 ex.s. c 223 § 28B.15.310; prior: 1961 ex.s. c 11 § 2; 1935 c 185 § 1; 1921 c 164 § 2; RRS § 4570. Formerly RCW 28.80.040.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 497: See note following RCW 28B.15.210.

Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.

28B.15.465 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.15.543 Waiver or grant of tuition and fees for recipients of the Washington scholars award—Qualifications. (Effective July 1, 2012.) (1) Subject to the limitations of RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges shall waive tuition and service and activities fees for students named by the office of student financial assistance on or before June 30, 1994, as recipients of the Washington scholars award under RCW 28A.600.100 through 28A.600.150. The waivers shall be used only for undergraduate studies. To qualify for the waiver, recipients shall enter the college or university within three years of high school graduation and maintain a minimum grade point average at the college or university equivalent to 3.30. Students shall be eligible to receive a maximum of twelve quarters or eight semesters of waivers and may transfer among state-supported institutions of higher education during that period and continue to have the tuition and services and activities fees waived by the state-supported institution of higher education that the student attends. Should the student's cumulative grade point average fall below 3.30 during the first three quarters or two semesters, that student may petition the office of student financial assistance which shall have the authority to establish a probationary period until such time as the student's grade point average meets required standards.

(2) Students named by the office of student financial assistance after June 30, 1994, as recipients of the Washington scholars award under RCW 28A.600.100 through 28A.600.150 shall be eligible to receive a grant for undergraduate coursework as authorized under RCW 28B.76.660. [2011 1st sp.s. c 11 § 152; 2004 c 275 § 49; 1995 1st sp.s. c 5 § 2; 1993 sp.s. c 18 § 19; 1992 c 231 § 17; 1990 c 33 § 558; 1987 c 465 § 2. Prior: 1985 c 390 § 30; 1985 c 370 § 68; 1985 c 341 § 16; 1984 c 278 § 17.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Additional notes found at www.leg.wa.gov

28B.15.610 Voluntary fees of students. (Effective January 1, 2012.) The provisions of this chapter shall not apply to or affect any student fee or charge which the students voluntarily maintain upon themselves for student purposes only. Students are authorized to create or increase voluntary student fees for each academic year when passed by a majority vote of the student government or its equivalent, or referendum presented to the student body or such other process that has been adopted under this section. Notwithstanding RCW 42.17A.635 (2) and (3), voluntary student fees imposed under this section and services and activities fees may be used for lobbying by a student government association or its equivalent and may also be used to support a statewide or national student organization or its equivalent that may engage in lobbying. [2011 c 60 § 11; 2009 c 179 § 1; 1969 ex.s. c 223 § 28B.15.610. Prior: 1915 c 66 § 8; RRS § 4552. Formerly RCW 28.77.065.]

Effective date—2011 c 60: See RCW 42.17A.919.

28B.15.732 Washington/Oregon reciprocity tuition and fee program—Reimbursement when greater net revenue loss. (Effective July 1, 2012.) Prior to January 1st of each odd-numbered year the office of student financial assistance, in consultation with appropriate agencies and officials in the state of Oregon, shall determine for the purposes of RCW 28B.15.730 the number of students for whom nonresident tuition and fees have been waived for the first academic year of the biennium and the fall term of the second academic year, and make an estimate of the number of such students for the remainder of the second academic year, and the difference between the aggregate amount of tuition and fees that would have been paid to the respective states by residents of the other state had such waivers not been made, and the aggregate amount of tuition and fees paid by residents of the other state. Should the office of student financial assistance determine that the state of Oregon has experienced a greater net tuition and fee revenue loss than institutions in Washington, it shall pay from funds appropriated for this purpose to the appropriate agency or institutions in Oregon an amount determined by subtracting the net tuition and fee revenue loss of Washington from the net tuition and fee revenue loss of Oregon, minus twenty-five thousand dollars for each year of the biennium: PROVIDED, That appropriate officials in the state of Oregon agree to make similar restitution to the state of Washington should the net tuition and fee revenue loss in Washington be greater than that in Oregon. [2011 1st sp.s. c 11 § 153; 1985 c 370 § 70; 1979 c 80 § 2.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.15.736 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.15.752 Washington/Idaho reciprocity tuition and fee program—Reimbursement when greater net revenue loss. (Effective July 1, 2012.) Prior to January 1st of each odd-numbered year, the office of student financial assistance in consultation with appropriate agencies and officials in the state of Idaho, shall determine for the purposes of RCW 28B.15.750 the number of students for whom nonresident tuition and fees have been waived for the first academic year of the biennium and the fall term of the second academic year, and make an estimate of the number of such students for the remainder of the second academic year, and the difference between the aggregate amount of tuition and fees that would have been paid to the respective states by residents of the other state had such waivers not been made, and the aggregate amount of tuition and fees paid by residents of the other state. Should the office of student financial assistance determine that the state of Idaho has experienced a greater net tuition and fee revenue loss than institutions in Washington, it shall pay from funds appropriated for this purpose to the appropriate agency or institution in Idaho an amount determined by subtracting the net tuition and fee revenue loss of Washington from the net tuition and fee revenue loss of Idaho, minus twenty-five thousand dollars for each year of the biennium if the appropriate officials in the state of Idaho agree to make similar restitution to the state of Washington should the net tuition and fee revenue loss in Washington be greater than that in Idaho. [2011 1st sp.s. c 11 § 154; 1985 c 370 § 74; 1983 c 166 § 2.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.15.754 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.15.758 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.15.760 Loan program for mathematics and science teachers—Definitions. (Effective July 1, 2012.) Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28B.15.762 and 28B.15.764.

(1) "Board" means the higher education coordinating board.

(2) "Borrower" means an eligible student who has received a loan under RCW 28B.15.762.

(3) "Eligible student" means a student registered for at least ten credit hours or the equivalent and demonstrates achievement of a 3.00 grade point average for each academic year, who is a resident student as defined by RCW 28B.15.012 through 28B.15.015, who is a "needy student" as defined in RCW 28B.92.030, and who has a declared major in a program leading to a degree in teacher education in a field of science or mathematics, or a certificated teacher who meets the same credit hour and "needy student" requirements

and is seeking an additional degree in science or mathematics.

(4) "Forgiven" or "to forgive" means to collect service as a teacher in a field of science or mathematics at a public school in the state of Washington in lieu of monetary payment.

(5) "Institution of higher education" or "institution" means a college or university in the state of Washington which is a member institution of an accrediting association recognized as such by rule of the *higher education coordinating board.

(6) "Office" means the office of student financial assistance.

(7) "Public school" means a middle school, junior high school, or high school within the public school system referred to in Article IX of the state Constitution.

(8) "Satisfied" means paid-in-full. [2011 1st sp.s. c 11 § 155; 2004 c 275 § 65; 1985 c 370 § 79; 1983 1st ex.s. c 74 § 1.]

Reviser's note: *(1) The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Additional notes found at www.leg.wa.gov

28B.15.762 Loan program for mathematics and science teachers—Terms and conditions—Collection—Disposition of payments—Rules. (Effective July 1, 2012.) (1) The office may make long-term loans to eligible students at institutions of higher education from the funds appropriated to the office for this purpose. The amount of any such loan shall not exceed the demonstrated financial need of the student or two thousand five hundred dollars for each academic year whichever is less, and the total amount of such loans to an eligible student shall not exceed ten thousand dollars. The interest rates and terms of deferral of such loans shall be consistent with the terms of the guaranteed loan program established by 20 U.S.C. Sec. 1701 et seq. The period for repaying the loan principal and interest shall be ten years with payments accruing quarterly commencing nine months from the date the borrower graduated. The entire principal and interest of each loan payment shall be forgiven for each payment period in which the borrower teaches science or mathematics in a public school in this state until the entire loan is satisfied or the borrower ceases to teach science or mathematics at a public school in this state. Should the borrower cease to teach science or mathematics at a public school in this state before the time in which the principal and interest on the loan are satisfied, payments on the unsatisfied portion of the principal and interest on the loan shall begin the next payment period and continue until the remainder of the loan is paid.

(2) The office is responsible for collection of loans made under subsection (1) of this section and shall exercise due diligence in such collection, maintaining all necessary records

to insure that maximum repayments are made. Collection and servicing of loans under subsection (1) of this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency. The *board is responsible to forgive all or parts of such loans under the criteria established in subsection (1) of this section and shall maintain all necessary records of forgiven payments.

(3) Receipts from the payment of principal or interest or any other subsidies to which the *board as lender is entitled, which are paid by or on behalf of borrowers under subsection (1) of this section, shall be deposited with the office and shall be used to cover the costs of making the loans under subsection (1) of this section, maintaining necessary records, and making collections under subsection (2) of this section. The office shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to make loans to eligible students.

(4) Any funds not used to make loans, or to cover the cost of making loans or making collections, shall be placed in the state educational trust fund for needy or disadvantaged students.

(5) The office shall adopt necessary rules to implement this section. [2011 1st sp.s. c 11 § 156; 1996 c 107 § 2; 1985 c 370 § 80; 1983 1st ex.s. c 74 § 2.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

Chapter 28B.20 RCW UNIVERSITY OF WASHINGTON

Sections

- 28B.20.105 Regents—Organization and conduct of business—Bylaws, rules and regulations—Meetings.
- 28B.20.110 Regents—Secretary—Treasurer—Duties—Treasurer's bond.
- 28B.20.283 through 28B.20.297 Repealed.
- 28B.20.328 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands.
- 28B.20.456 Occupational and environmental research facility—Advisory committee.
- 28B.20.502 Medical cannabis research.
- 28B.20.725 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc.

28B.20.105 Regents—Organization and conduct of business—Bylaws, rules and regulations—Meetings. The board shall organize by electing from its membership a president and an executive committee, of which committee the president shall be ex officio chair. The board may adopt bylaws or rules and regulations for its own government. The board shall hold regular quarterly meetings, and during the interim between such meetings the executive committee may transact business for the whole board: PROVIDED, That the executive committee may call special meetings of the whole board when such action is deemed necessary. [2011 c 336 §

717; 1969 ex.s. c 223 § 28B.20.105. Prior: (i) 1909 c 97 p 240 § 4; RRS § 4555; prior: 1897 c 118 § 185. Formerly RCW 28.77.100. (ii) 1939 c 176 § 1, part; 1927 c 227 § 1, part; 1909 c 97 p 240 § 5, part; RRS § 4557, part. Formerly RCW 28.77.130, part.]

28B.20.110 Regents—Secretary—Treasurer—Duties—Treasurer’s bond. The board shall appoint a secretary and a treasurer who shall hold their respective offices during the pleasure of the board and carry out such respective duties as the board shall prescribe. In addition to such other duties as the board prescribes, the secretary shall record all proceedings of the board and carefully preserve the same. The treasurer shall give bond for the faithful performance of the duties of his or her office in such amount as the regents may require: PROVIDED, That the university shall pay the fee for such bond. [2011 c 336 § 718; 1969 ex.s. c 223 § 28B.20.110. Prior: 1890 p 396 § 6; RRS § 4556. Formerly RCW 28.77.110.]

28B.20.283 through 28B.20.297 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.20.328 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands. (1) Any lease of public lands with outdoor recreation potential authorized by the regents of the University of Washington shall be open and available to the public for compatible recreational use unless the regents of the University of Washington determine that the leased land should be closed in order to prevent damage to crops or other land cover, to improvements on the land, to the lessee, or to the general public or is necessary to avoid undue interference with carrying forward a university program. Any lessee may file an application with the regents of the University of Washington to close the leased land to any public use. The regents shall cause a written notice of the impending closure to be posted in a conspicuous place in the university’s business office and in the office of the county auditor in which the land is located thirty days prior to the public hearing. This notice shall state the parcel or parcels involved and shall indicate the time and place of the public hearing. Upon a determination by the regents that posting is not necessary, the lessee shall desist from posting. Upon a determination by the regents that posting is necessary, the lessee shall post his or her leased premises so as to prohibit recreational uses thereon. In the event any such lands are so posted, it shall be unlawful for any person to hunt or fish, or for any person other than the lessee or his or her immediate family to use any such posted lands for recreational purposes.

(2) The regents of the University of Washington may insert the provisions of subsection (1) of this section in all leases hereafter issued. [2011 c 336 § 719; 1969 ex.s. c 46 § 3. Formerly RCW 28.77.235.]

28B.20.456 Occupational and environmental research facility—Advisory committee. There is hereby created an advisory committee to the environmental research facility consisting of eight members. Membership on the

committee shall consist of the director of the department of labor and industries, the assistant secretary for the division of health services of the department of social and health services, the president of the Washington state labor council, the president of the association of Washington business, the dean of the school of public health and community medicine of the University of Washington, the dean of the school of engineering of the University of Washington, the president of the Washington state medical association, or their representatives, and the chair of the department of environmental health of the University of Washington, who shall be ex officio chair of the committee without vote. Such committee shall meet at least semiannually at the call of the chair. Members shall serve without compensation. It shall consult, review and evaluate policies, budgets, activities, and programs of the facility relating to industrial and occupational health to the end that the facility will serve in the broadest sense the health of the worker as it may be related to his or her employment. [2011 c 336 § 720; 1973 c 62 § 9; 1969 ex.s. c 223 § 28B.20.456. Prior: 1963 c 151 § 4. Formerly RCW 28.77.416.]

Additional notes found at www.leg.wa.gov

28B.20.502 Medical cannabis research. The University of Washington and Washington State University may conduct scientific research on the efficacy and safety of administering cannabis as part of medical treatment. As part of this research, the University of Washington and Washington State University may develop and conduct studies to ascertain the general medical safety and efficacy of cannabis and may develop medical guidelines for the appropriate administration and use of cannabis. [2011 c 181 § 1002.]

28B.20.725 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc. The board is hereby empowered:

- (1) To reserve the right to issue bonds later on a parity with any bonds being issued;
- (2) To authorize the investing of moneys in the bond retirement fund and any reserve account therein;
- (3) To authorize the transfer of money from the University of Washington building account to the bond retirement fund when necessary to prevent a default in the payments required to be made out of such fund;
- (4) To create a reserve account or accounts in the bond retirement fund to secure the payment of the principal of and interest on any bonds;
- (5) To authorize the transfer to the University of Washington building account of any money on deposit in the bond retirement fund in excess of debt service for a period of three years from the date of such transfer on all outstanding bonds payable out of such fund. However, during the 2009-2011 fiscal biennium, the legislature may transfer to the University of Washington building account moneys that are in excess of the debt service due within one year of the date of transfer on all outstanding bonds payable out of the bond retirement fund. However, during the 2011-2013 fiscal biennium, the legislature may transfer to the University of Washington building account moneys that are in excess of the debt service due within one year of the date of transfer on all outstanding

bonds payable out of the bond retirement fund. [2011 1st sp.s. c 48 § 7020; 2010 1st sp.s. c 36 § 6008; 1969 ex.s. c 223 § 28B.20.725. Prior: 1959 c 193 § 6. Formerly RCW 28.77.545.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2010 1st sp.s. c 36: See note following RCW 43.155.050.

1977 *Bond act for the refunding of outstanding limited obligation revenue bonds of institutions of higher education, as affecting: RCW 28B.14C.080 through 28B.14C.130.*

Chapter 28B.30 RCW

WASHINGTON STATE UNIVERSITY

Sections

- 28B.30.125 Regents—Board organization—President—President's duties—Bylaws, laws.
- 28B.30.130 Regents—Treasurer of board—Bond—Disbursement of funds by.
- 28B.30.135 Regents—University president as secretary of board—Duties—Bond.
- 28B.30.325 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands.
- 28B.30.515 Findings—University Center of North Puget Sound—Management and leadership. (*Contingent effective date.*)
- 28B.30.750 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc.

Medical cannabis research: RCW 28B.20.502.

28B.30.125 Regents—Board organization—President—President's duties—Bylaws, laws. The board of regents shall meet and organize by the election of a president from their own number on or as soon as practicable after the first Wednesday in April of each year.

The board president shall be the chief executive officer of the board and shall preside at all meetings thereof, except that in his or her absence the board may appoint a chair pro tempore. The board president shall sign all instruments required to be executed by said board other than those for the disbursement of funds.

The board may adopt bylaws for its own organizational purposes and enact laws for the government of the university and its properties. [2011 c 336 § 721; 1969 ex.s. c 223 § 28B.30.125. Prior: (i) 1955 c 346 § 1, part; 1909 c 97 p 246 § 6, part; RRS § 4577, part. Formerly RCW 28.80.110, part. (ii) 1909 c 97 p 247 § 7, part; RRS § 4578, part; prior: 1897 c 118 § 196, part; 1891 c 145 § 7, part. Formerly RCW 28.80.120, part. (iii) 1909 c 97 p 249 § 16, part; RRS § 4596, part; prior: 1897 c 118 § 205, part; 1891 c 145 § 19, part. Formerly RCW 28.80.160, part.]

28B.30.130 Regents—Treasurer of board—Bond—Disbursement of funds by. The board of regents shall appoint a treasurer who shall be the financial officer of the board and who shall hold office during the pleasure of the board. The treasurer shall render a true and faithful account of all moneys received and paid out by him or her, and shall give bond for the faithful performance of the duties of his or her office in such amount as the regents require: PROVIDED, That the university shall pay the fee for such bond.

The treasurer shall make disbursements of the funds in his or her hands on the order of the board, which order shall be countersigned by the secretary of the board, and shall state

on what account the disbursement is made. [2011 c 336 § 722; 1969 ex.s. c 223 § 28B.30.130. Prior: (i) 1955 c 346 § 1, part; 1909 c 97 p 246 § 6, part; RRS § 4577, part. Formerly RCW 28.80.110, part. (ii) 1909 c 97 p 246 § 7, part; RRS § 4578, part; prior: 1897 c 118 § 196, part; 1891 c 145 § 7, part. Formerly RCW 28.80.120, part. (iii) 1909 c 97 p 249 § 16, part; RRS § 4596, part; prior: 1897 c 118 § 205, part; 1891 c 145 § 19, part. Formerly RCW 28.80.160, part.]

28B.30.135 Regents—University president as secretary of board—Duties—Bond. The president of the university shall be secretary of the board of regents but he or she shall not have the right to vote; as such he or she shall be the recording officer of said board, shall attest all instruments required to be signed by the board president, shall keep a true record of all the proceedings of the board, and shall perform all the duties pertaining to the office and do all other things required of him or her by the board. The secretary shall give a bond in the penal sum of not less than five thousand dollars conditioned for the faithful performance of his or her duties as such officer: PROVIDED, That the university shall pay the fee for such bond. [2011 c 336 § 723; 1969 ex.s. c 223 § 28B.30.135. Prior: (i) 1955 c 346 § 1, part; 1909 c 97 p 246 § 6, part; RRS § 4577, part. Formerly RCW 28.80.110, part. (ii) 1909 c 97 p 247 § 7, part; RRS § 4578, part; prior: 1897 c 118 § 196, part; 1891 c 145 § 7, part. Formerly RCW 28.80.120, part.]

28B.30.325 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands.

(1) Any lease of public lands with outdoor recreation potential authorized by the regents of Washington State University shall be open and available to the public for compatible recreational use unless the regents of Washington State University determine that the leased land should be closed in order to prevent damage to crops or other land cover, to improvements on the land, to the lessee, or to the general public or is necessary to avoid undue interference with carrying forward a university program. Any lessee may file an application with the regents of Washington State University to close the leased land to any public use. The regents shall cause written notice of the impending closure to be posted in a conspicuous place in the university's business office, and in the office of the county auditor in which the land is located thirty days prior to the public hearing. This notice shall state the parcel or parcels involved and shall indicate the time and place of the public hearing. Upon a determination by the regents that posting is not necessary, the lessee shall desist from posting. Upon a determination by the regents that posting is necessary, the lessee shall post his or her leased premises so as to prohibit recreational uses thereon. In the event any such lands are so posted, it shall be unlawful for any person to hunt or fish, or for any person other than the lessee or his or her immediate family to use such posted land for recreational purposes.

(2) The regents of Washington State University may insert the provisions of subsection (1) of this section in all leases hereafter issued. [2011 c 336 § 724; 1969 ex.s. c 46 § 4. Formerly RCW 28.80.246.]

28B.30.515 Findings—University Center of North Puget Sound—Management and leadership. (Contingent effective date.) (1) The legislature finds that access to baccalaureate and graduate degree programs continues to be limited for residents of north Snohomish, Island, and Skagit counties. Studies conducted by the state board for community and technical colleges, the higher education coordinating board, and the council of presidents confirm that enrollment in higher education compared to demand in this geographic region lags behind enrollment in other parts of the state, particularly for upper-division courses leading to advanced degrees.

(2) The legislature also finds that access to high employer demand programs of study is imperative for the state's global competitiveness and economic prosperity, particularly those degrees in the science, technology, engineering, and mathematics (STEM) fields that align with the workforce skill demands of the regional economy, that support the aerospace industry, and provide skilled undergraduate and graduate-degree engineers required by the largest employers in the aerospace industry cluster.

(3) The legislature finds that meeting the long-range goal of greatly expanded access for the population of the region to the widest array of baccalaureate and graduate programs can best be accomplished by assigning responsibility to a research university with multiple experiences in similar settings.

(4) Management and leadership of the University Center of North Puget Sound is assigned to Washington State University to meet the needs of the Everett metropolitan area and the north Snohomish, Island, and Skagit county region and the state of Washington for baccalaureate and graduate degrees offered by a state university. The chief executive officer of the University Center of North Puget Sound is the director who reports to the president of Washington State University. The director shall manage the activities and logistics of operating the center, make policy and planning recommendations to the council in subsection (5) of this section, and implement decisions of the council.

(5)(a) Washington State University and Everett Community College must collaborate with community leaders, and other four-year institutions of higher education that offer programs at the University Center of North Puget Sound to serve the varied interests of students in the region. To this end, a coordinating and planning council must be established to be responsible for long-range and strategic planning, interinstitutional collaboration, collaboration with the community served, and dispute resolution for the center. The following individuals shall comprise the coordinating and planning council:

- (i) The president of Washington State University, or his or her designee;
- (ii) The provost of Washington State University, or his or her designee;
- (iii) The president of Everett Community College;
- (iv) Two representatives of two other institutions of higher education that offer baccalaureate or graduate degree programs at the center;
- (v) A student enrolled at the University Center of North Puget Sound appointed by the coordinating and planning council;

- (vi) The director of the council, as the nonvoting chair;
- (vii) A community leader appointed by the president of Everett Community College; and
- (viii) A community leader appointed by the mayor of Everett.

(b) The coordinating and planning council may appoint other groups, as appropriate, to advise on administration and operations, and may alter its own composition by agreement of all the members.

(6)(a) Washington State University shall assume leadership of the center upon completion and approval by the legislature as provided under (d) of this subsection of a strategic plan for meeting the academic needs of the region and successful establishment of an engineering degree program. The strategic plan must build on the strengths of the institutions, reflecting each institution's mission, in order to provide the region with the highest standard of educational programs, research, and service to the community. The strategic plan must include a multibiennium budget that addresses both operating and capital expenses required to effectively implement the plan. The strategic plan shall be developed with the collaboration of the University Center at Everett Community College and all the institutions of higher education that provide baccalaureate degrees at the University Center, and community leaders.

(b) Center partners must implement the strategic plan with careful attention to the academic and professional standards established and maintained by each institution and by the appropriate accrediting bodies, and to the historic role of each institution's governing board in setting policy.

(c) The strategic plan must address expansion of the range and depth of educational opportunities in the region and include strategies that:

- (i) Build upon baccalaureate and graduate degree offerings at the center;
- (ii) Meet projected student enrollment demands for baccalaureate, graduate, and certificate programs in the region;
- (iii) Meet employers' needs for skilled workers by expanding high employer demand programs of study as defined in RCW 28B.50.030, with an initial and ongoing emphasis by Washington State University on undergraduate and graduate science, technology, mathematics, and engineering degree programs, including a variety of engineering disciplines such as civil, mechanical, aeronautical, and aerospace manufacturing;

(iv) Coordinate delivery of lower and upper division courses to maximize student opportunities and resources; and

(v) Transfer budget support and resources for the center from Everett Community College to Washington State University.

(d) The strategic plan must be completed by December 1, 2012, and submitted to the legislature for review. The strategic plan shall be considered approved if the legislature does not take further action on the strategic plan during the 2013 legislative session. The transfer of the responsibility for the management and operation of the University Center of North Puget Sound to Washington State University must occur by July 1, 2014.

(7)(a) Academic programming and delivery at the center must be developed in accordance with the missions of Washington State University, Everett Community College, and

other institutions of higher education that have a presence at the center.

(b) Each institution shall abide by the guidelines for university centers adopted by the higher education coordinating board.

(c) Each institution shall award all degrees and certificates granted in the programs it delivers at the center.

(d) The coordinating council described in subsection (5) of this section shall establish a process for prioritizing new programs and revising existing programs that facilitates timeliness of new offerings, recognizes the internal processes of the proposing institutions, and addresses each proposal's fit with the needs of the region.

(8)(a) Washington State University shall review center expansion needs and consider capital facilities funding at least annually. Washington State University and Everett Community College must cooperate in preparing funding requests and bond financing for submission to the legislature on behalf of development at the center, in accordance with each institution's process and priorities for advancing legislative requests.

(b) Washington State University shall design, construct, and manage any facility developed at the center. Any facility developed at the center with Everett Community College capital funding must be designed by Everett Community College in consultation with Washington State University. Building construction may be managed by Washington State University via an interagency agreement which details responsibility and associated costs. Building operations and management for all facilities at the center must be governed by the infrastructure and operating cost allocation method described in subsection (9) of this section.

(9) Washington State University has responsibility for infrastructure development and maintenance for the center. All infrastructure operating and maintenance costs are to be shared in what is deemed to be an equitable and fair manner based on space allocation, special cost, and other relevant considerations. Washington State University may make infrastructure development and maintenance decisions in consultation with the council described in subsection (5) of this section.

(10) In the event that conflict cannot be resolved through the coordinating council described in subsection (5) of this section the higher education coordinating board dispute resolution must be employed. [2011 c 321 § 1.]

Contingent effective date—2011 c 321: "(1) This act takes effect only after the higher education coordinating board determines whether a needs assessment and analysis is required and, if so, conducts a needs assessment and viability determination under RCW 28B.76.230 and recommends that the provisions in section 1 of this act occur.

(2) The higher education coordinating board must make a recommendation under subsection (1) of this section by July 1, 2012.

(3) The higher education coordinating board shall notify the office of financial management, the legislature, and the code reviser's office of the board's recommendations regarding the provisions in section 1 of this act." [2011 c 321 § 3.]

28B.30.750 Additional powers of board—Issuance of bonds, investments, transfer of funds, etc. The board is hereby empowered:

(1) To reserve the right to issue bonds later on a parity with any bonds being issued;

(2) To authorize the investing of moneys in the bond retirement fund and any reserve account therein;

(3) To authorize the transfer of money from the Washington State University building account to the bond retirement fund when necessary to prevent a default in the payments required to be made out of such fund;

(4) To create a reserve account or accounts in the bond retirement fund to secure the payment of the principal of and interest on any bonds;

(5) To authorize the transfer to the Washington State University building account of any money on deposit in the bond retirement fund in excess of debt service for a period of three years from the date of such transfer on all outstanding bonds payable out of such fund. However, during the 2009-2011 fiscal biennium, the legislature may transfer to the Washington State University building account moneys that are in excess of the debt service due within one year of the date of transfer on all outstanding bonds payable out of the bond retirement fund. However, during the 2011-2013 fiscal biennium, the legislature may transfer to the Washington State University building account moneys that are in excess of the debt service due within one year of the date of transfer on all outstanding bonds payable out of the bond retirement fund. [2011 1st sp.s. c 48 § 7021; 2010 1st sp.s. c 36 § 6009; 1969 ex.s. c 223 § 28B.30.750. Prior: 1961 ex.s. c 12 § 6. Formerly RCW 28.80.550.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2010 1st sp.s. c 36: See note following RCW 43.155.050.

Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.

Chapter 28B.31 RCW

1977 WASHINGTON STATE UNIVERSITY BUILDINGS AND FACILITIES FINANCING ACT

Sections

28B.31.090 Prerequisite to bond issuance.

28B.31.090 Prerequisite to bond issuance. The bonds authorized by this chapter shall be issued only after an officer of Washington State University, designated by the Washington State University board of regents, has certified, based upon his or her estimates of future tuition income and other factors, that an adequate balance will be maintained in the Washington State University building account to enable the board of regents to meet the requirements of RCW 28B.31.070 during the life of the bonds to be issued. [2011 c 336 § 725; 1977 ex.s. c 344 § 9.]

Additional notes found at www.leg.wa.gov

Chapter 28B.35 RCW

REGIONAL UNIVERSITIES

Sections

28B.35.105 Trustees—Organization and officers of board—Quorum.

28B.35.110 Trustees—Meetings of board.

28B.35.120 Trustees—General powers and duties of board.

28B.35.202 Educational specialist degrees—Review by higher education coordinating board.

28B.35.230 Certificates, diplomas—Signing—Contents.

- 28B.35.310 Model schools and training departments—Requisitioning of pupils—President may refuse admission.
- 28B.35.370 Disposition of building fees and normal school fund revenues—Bond payments—Capital projects accounts.
- 28B.35.730 Bonds—Issuance, sale, form, term, interest, etc.—Covenants—Deposit of proceeds.

28B.35.105 Trustees—Organization and officers of board—Quorum. Each board of regional university trustees shall elect one of its members chair, and it shall elect a secretary, who may or may not be a member of the board. Each board shall have power to adopt bylaws for its government and for the government of the school, which bylaws shall not be inconsistent with law, and to prescribe the duties of its officers, committees, and employees. A majority of the board shall constitute a quorum for the transaction of all business. [2011 c 336 § 726; 1977 ex.s. c 169 § 46. Prior: 1969 ex.s. c 223 § 28B.40.105; prior: 1909 p 252 § 3; RRS § 4606; prior: 1897 c 118 § 214; 1893 c 107 § 3. Formerly RCW 28B.40.105, part; 28.81.030 and 28.81.050(1), (2).]

Additional notes found at www.leg.wa.gov

28B.35.110 Trustees—Meetings of board. Each board of regional university trustees shall hold at least two regular meetings each year, at such times as may be provided by the board. Special meetings shall be held as may be deemed necessary, whenever called by the chair or by a majority of the board. Public notice of all meetings shall be given in accordance with chapter 42.32 RCW. [2011 c 336 § 727; 1977 ex.s. c 169 § 47. Prior: 1969 ex.s. c 223 § 28B.40.110; prior: 1917 c 128 § 1, part; 1909 c 97 p 253 § 6, part; RRS § 4609, part; prior: 1897 c 118 § 217, part; 1893 c 107 § 6, part. Formerly RCW 28B.40.110, part; 28.81.040, part.]

Open public meetings act: Chapter 42.30 RCW.

Additional notes found at www.leg.wa.gov

28B.35.120 Trustees—General powers and duties of board. In addition to any other powers and duties prescribed by law, each board of trustees of the respective regional universities:

(1) Shall have full control of the regional university and its property of various kinds, except as otherwise provided by law.

(2) Shall employ the president of the regional university, his or her assistants, members of the faculty, and other employees of the institution, who, except as otherwise provided by law, shall hold their positions, until discharged therefrom by the board for good and lawful reason.

(3) With the assistance of the faculty of the regional university, shall prescribe the course of study in the various schools and departments thereof and publish such catalogues thereof as the board deems necessary: PROVIDED, That the Washington professional educator standards board shall determine the requisites for and give program approval of all courses leading to teacher certification by such board.

(4) Establish such divisions, schools, or departments necessary to carry out the purposes of the regional university and not otherwise proscribed by law.

(5) Except as otherwise provided by law, may establish and erect such new facilities as determined by the board to be necessary for the regional university.

(6) May acquire real and other property as provided in RCW 28B.10.020, as now or hereafter amended.

(7) Except as otherwise provided by law, may purchase all supplies and purchase or lease equipment and other personal property needed for the operation or maintenance of the regional university.

(8) May establish, lease, operate, equip, and maintain self-supporting facilities in the manner provided in RCW 28B.10.300 through 28B.10.330, as now or hereafter amended.

(9) Except as otherwise provided by law, to enter into such contracts as the trustees deem essential to regional university purposes.

(10) May receive such gifts, grants, conveyances, devises, and bequests of real or personal property from whatsoever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the regional university programs; sell, lease, or exchange, invest or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof.

(11) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

(12) May promulgate such rules and regulations, and perform all other acts not forbidden by law, as the board of trustees may in its discretion deem necessary or appropriate to the administration of the regional university. [2011 c 336 § 728; 2006 c 263 § 824; 2004 c 275 § 54; 1985 c 370 § 94; 1977 ex.s. c 169 § 48. Prior: 1969 ex.s. c 223 § 28B.40.120; prior: 1909 c 97 p 252 § 4; RRS § 4607; prior: 1905 c 85 § 1; 1897 c 118 § 215; 1893 c 107 § 4. Formerly RCW 28B.40.120, part; 28.81.050.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Additional notes found at www.leg.wa.gov

28B.35.202 Educational specialist degrees—Review by higher education coordinating board. The board of trustees of Eastern Washington University may offer educational specialist degrees subject to review and approval by the higher education coordinating board. [2011 c 136 § 1.]

28B.35.230 Certificates, diplomas—Signing—Contents. Every diploma issued by a regional university shall be signed by the chair of the board of trustees and by the president of the regional university issuing the same, and sealed with the appropriate seal. In addition to the foregoing, teaching certificates shall be countersigned by the state superintendent of public instruction. Every certificate shall specifically state what course of study the holder has completed and for what length of time such certificate is valid in the schools of the state. [2011 c 336 § 729; 1977 ex.s. c 169 § 53. Prior: 1969 ex.s. c 223 § 28B.40.230; prior: 1917 c 128 § 4; 1909 c 97 p 254 § 9; RRS § 4615; prior: 1897 c 118 § 220; 1895 c

146 § 2; 1893 c 107 § 13. Formerly RCW 28B.40.230, part; 28.81.056; 28.81.050(15).]

Additional notes found at www.leg.wa.gov

28B.35.310 Model schools and training departments—Requisitioning of pupils—President may refuse admission. It shall thereupon be the duty of the board of the school district or districts with which such statement has been filed, to apportion for attendance to the said model school or training department, a sufficient number of pupils from the public schools under the supervision of said board as will furnish to such regional university the number of pupils required in order to maintain such facility: PROVIDED, That the president of said regional university may refuse to accept any such pupil as in his or her judgment would tend to reduce the efficiency of said model school or training department. [2011 c 336 § 730; 1977 ex.s. c 169 § 56. Prior: 1969 ex.s. c 223 § 28B.40.310; prior: 1907 c 97 § 2; RRS § 4613. Formerly RCW 28B.40.310, part; 28.81.060.]

Additional notes found at www.leg.wa.gov

28B.35.370 Disposition of building fees and normal school fund revenues—Bond payments—Capital projects accounts. Within thirty-five days from the date of collection thereof all building fees of each regional university and The Evergreen State College shall be paid into the state treasury and these together with such normal school fund revenues as provided in RCW 28B.35.751 as are received by the state treasury shall be credited as follows:

(1) On or before June 30th of each year the board of trustees of each regional university and The Evergreen State College, if issuing bonds payable out of its building fees and above described normal school fund revenues, shall certify to the state treasurer the amounts required in the ensuing twelve months to pay and secure the payment of the principal of and interest on such bonds. The amounts so certified by each regional university and The Evergreen State College shall be a prior lien and charge against all building fees and above described normal school fund revenues of such institution. The state treasurer shall thereupon deposit the amounts so certified in the Eastern Washington University capital projects account, the Central Washington University capital projects account, the Western Washington University capital projects account, or The Evergreen State College capital projects account respectively, which accounts are hereby created in the state treasury. The amounts deposited in the respective capital projects accounts shall be used to pay and secure the payment of the principal of and interest on the building bonds issued by such regional universities and The Evergreen State College as authorized by law. If in any twelve month period it shall appear that the amount certified by any such board of trustees is insufficient to pay and secure the payment of the principal of and interest on the outstanding building and above described normal school fund revenue bonds of its institution, the state treasurer shall notify the board of trustees and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal of and interest on all such bonds then outstanding shall be fully met at all times.

[2011 RCW Supp—page 552]

(2) All normal school fund revenue pursuant to RCW 28B.35.751 shall be deposited in the Eastern Washington University capital projects account, the Central Washington University capital projects account, the Western Washington University capital projects account, or The Evergreen State College capital projects account respectively, which accounts are hereby created in the state treasury. The sums deposited in the respective capital projects accounts shall be appropriated and expended to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and normal school revenue and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto except for any sums transferred therefrom as authorized by law. During the 2011-2013 biennium, sums in the respective capital accounts shall also be used for routine facility maintenance and utility costs.

(3) Funds available in the respective capital projects accounts may also be used for certificates of participation under chapter 39.94 RCW. [2011 1st sp.s. c 48 § 7024. Prior: 2009 c 499 § 5; 2009 c 497 § 6021; 1991 sp.s. c 13 § 49; prior: 1985 c 390 § 47; 1985 c 57 § 15; 1977 ex.s. c 169 § 79; 1969 ex.s. c 223 § 28B.40.370; prior: 1967 c 47 §§ 11, 14; 1965 c 76 § 2; 1961 ex.s. c 14 § 5; 1961 ex.s. c 13 § 4. Formerly RCW 28B.40.370; 28.81.085; 28.81.540.]

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2009 c 497: See note following RCW 28B.15.210.

Additional notes found at www.leg.wa.gov

28B.35.730 Bonds—Issuance, sale, form, term, interest, etc.—Covenants—Deposit of proceeds. For the purpose of financing the cost of any projects, each of the boards is hereby authorized to adopt the resolution or resolutions and prepare all other documents necessary for the issuance, sale, and delivery of the bonds or any part thereof at such time or times as it shall deem necessary and advisable. Said bonds:

- (1) Shall not constitute
 - (a) An obligation, either general or special, of the state; or
 - (b) A general obligation of the university or college or of the board;
- (2) Shall be
 - (a) Either registered or in coupon form; and
 - (b) Issued in denominations of not less than one hundred dollars; and
 - (c) Fully negotiable instruments under the laws of this state; and
 - (d) Signed on behalf of the university or college by the chair of the board, attested by the secretary of the board, have the seal of the university or college impressed thereon or a facsimile of such seal printed or lithographed in the bottom border thereof, and the coupons attached thereto shall be signed with the facsimile signatures of such chair and the secretary;
- (3) Shall state
 - (a) The date of issue; and
 - (b) The series of the issue and be consecutively numbered within the series; and

(c) That the bond is payable both principal and interest solely out of the bond retirement fund;

(4) Each series of bonds shall bear interest, payable either annually or semiannually, as the board may determine;

(5) Shall be payable both principal and interest out of the bond retirement fund;

(6) Shall be payable at such times over a period of not to exceed forty years from date of issuance, at such place or places, and with such reserved rights of prior redemption, as the board may prescribe;

(7) Shall be sold in such manner and at such price as the board may prescribe;

(8) Shall be issued under and subject to such terms, conditions, and covenants providing for the payment of the principal thereof and interest thereon and such other terms, conditions, covenants, and protective provisions safeguarding such payment, not inconsistent with RCW 28B.35.700 through 28B.35.790, as now or hereafter amended, and as found to be necessary by the board for the most advantageous sale thereof, which may include but not be limited to:

(a) A covenant that the building fees shall be established, maintained, and collected in such amounts that will provide money sufficient to pay the principal of and interest on all bonds payable out of the bond retirement fund, to set aside and maintain the reserves required to secure the payment of such principal and interest, and to maintain any coverage which may be required over such principal and interest;

(b) A covenant that a reserve account shall be created in the bond retirement fund to secure the payment of the principal of and interest on all bonds issued and a provision made that certain amounts be set aside and maintained therein;

(c) A covenant that sufficient moneys may be transferred from the capital projects account of the university or college issuing the bonds to the bond retirement fund of such university or college when ordered by the board of trustees in the event there is ever an insufficient amount of money in the bond retirement fund to pay any installment of interest or principal and interest coming due on the bonds or any of them;

(d) A covenant fixing conditions under which bonds on a parity with any bonds outstanding may be issued.

The proceeds of the sale of all bonds, exclusive of accrued interest which shall be deposited in the bond retirement fund, shall be deposited in the state treasury to the credit of the capital projects account of the university or college issuing the bonds and shall be used solely for paying the costs of the projects. [2011 c 336 § 731; 1985 c 390 § 51; 1977 ex.s. c 169 § 85; 1970 ex.s. c 56 § 30; 1969 ex.s. c 232 § 104; 1969 ex.s. c 223 § 28B.40.730. Prior: 1961 ex.s. c 14 § 4. Formerly RCW 28B.40.730; 28.81.530.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Capital projects accounts of regional universities and The Evergreen State College: RCW 28B.35.370.

Additional notes found at www.leg.wa.gov

Chapter 28B.38 RCW

SPOKANE INTERCOLLEGIATE RESEARCH AND TECHNOLOGY INSTITUTE

Sections

28B.38.010 through 28B.38.900 Repealed.

28B.38.010 through 28B.38.900 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 28B.40 RCW

THE EVERGREEN STATE COLLEGE

Sections

28B.40.105 Trustees—Organization and officers of board—Quorum.
 28B.40.110 Trustees—Meetings of board.
 28B.40.120 Trustees—General powers and duties of board.
 28B.40.195 Treasurer—Appointment, term, duties, bonds.
 28B.40.230 Certificates, diplomas—Signing—Contents.
 28B.40.310 Model schools and training departments—Requisitioning of pupils—President may refuse admission.

28B.40.105 Trustees—Organization and officers of board—Quorum. The board of The Evergreen State College trustees shall elect one of its members chair, and it shall elect a secretary, who may or may not be a member of the board. The board shall have power to adopt bylaws for its government and for the government of the school, which bylaws shall not be inconsistent with law, and to prescribe the duties of its officers, committees, and employees. A majority of the board shall constitute a quorum for the transaction of all business. [2011 c 336 § 732; 1977 ex.s. c 169 § 66; 1969 ex.s. c 223 § 28B.40.105. Prior: 1909 p 252 § 3; RRS § 4606; prior: 1897 c 118 § 214; 1893 c 107 § 3. Formerly RCW 28.81.030 and 28.81.050(1), (2).]

Additional notes found at www.leg.wa.gov

28B.40.110 Trustees—Meetings of board. The board of The Evergreen State College trustees shall hold at least two regular meetings each year, at such times as may be provided by the board. Special meetings shall be held as may be deemed necessary, whenever called by the chair or by a majority of the board. Public notice of all meetings shall be given in accordance with chapter 42.32 RCW. [2011 c 336 § 733; 1977 ex.s. c 169 § 67; 1969 ex.s. c 223 § 28B.40.110. Prior: 1917 c 128 § 1, part; 1909 c 97 p 253 § 6, part; RRS § 4609, part; prior: 1897 c 118 § 217, part; 1893 c 107 § 6, part. Formerly RCW 28.81.040, part.]

Open public meetings act: Chapter 42.30 RCW.

Additional notes found at www.leg.wa.gov

28B.40.120 Trustees—General powers and duties of board. In addition to any other powers and duties prescribed by law, the board of trustees of The Evergreen State College:

(1) Shall have full control of the state college and its property of various kinds, except as otherwise provided by law.

(2) Shall employ the president of the state college, his or her assistants, members of the faculty, and other employees of the institution, who, except as otherwise provided by law,

shall hold their positions, until discharged therefrom by the board for good and lawful reason.

(3) With the assistance of the faculty of the state college, shall prescribe the course of study in the various schools and departments thereof and publish such catalogues thereof as the board deems necessary: PROVIDED, That the Washington professional educator standards board shall determine the requisites for and give program approval of all courses leading to teacher certification by such board.

(4) Establish such divisions, schools, or departments necessary to carry out the purposes of the college and not otherwise proscribed by law.

(5) Except as otherwise provided by law, may establish and erect such new facilities as determined by the board to be necessary for the college.

(6) May acquire real and other property as provided in RCW 28B.10.020, as now or hereafter amended.

(7) Except as otherwise provided by law, may purchase all supplies and purchase or lease equipment and other personal property needed for the operation or maintenance of the college.

(8) May establish, lease, operate, equip, and maintain self-supporting facilities in the manner provided in RCW 28B.10.300 through 28B.10.330, as now or hereafter amended.

(9) Except as otherwise provided by law, to enter into such contracts as the trustees deem essential to college purposes.

(10) May receive such gifts, grants, conveyances, devises, and bequests of real or personal property from whatsoever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the college programs; sell, lease, or exchange, invest or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof.

(11) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

(12) May promulgate such rules and regulations, and perform all other acts not forbidden by law, as the board of trustees may in its discretion deem necessary or appropriate to the administration of the college. [2011 c 336 § 734; 2006 c 263 § 825; 2004 c 275 § 56; 1985 c 370 § 95; 1977 ex.s. c 169 § 68; 1969 ex.s. c 223 § 28B.40.120. Prior: 1909 c 97 p 252 § 4; RRS § 4607; prior: 1905 c 85 § 1; 1897 c 118 § 215; 1893 c 107 § 4. Formerly RCW 28.81.050.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Additional notes found at www.leg.wa.gov

28B.40.195 Treasurer—Appointment, term, duties, bonds. Each board of state college trustees shall appoint a treasurer who shall be the financial officer of the board and who shall hold office during the pleasure of the board. Each

[2011 RCW Supp—page 554]

treasurer shall render a true and faithful account of all moneys received and paid out by him or her, and shall give bond for the faithful performance of the duties of his or her office in such amount as the trustees require: PROVIDED, That the respective colleges shall pay the fees for any such bonds. [2011 c 336 § 735; 1977 c 52 § 1.]

Regional universities—Designation: RCW 28B.35.010.

28B.40.230 Certificates, diplomas—Signing—Contents. Every diploma issued by The Evergreen State College shall be signed by the chair of the board of trustees and by the president of the state college, and sealed with the appropriate seal. In addition to the foregoing, teaching certificates shall be countersigned by the state superintendent of public instruction. Every certificate shall specifically state what course of study the holder has completed and for what length of time such certificate is valid in the schools of the state. [2011 c 336 § 736; 1977 ex.s. c 169 § 72; 1969 ex.s. c 223 § 28B.40.230. Prior: 1917 c 128 § 4; 1909 c 97 p 254 § 9; RRS § 4615; prior: 1897 c 118 § 220; 1895 c 146 § 2; 1893 c 107 § 13. Formerly RCW 28.81.056; 28.81.050(15).]

Additional notes found at www.leg.wa.gov

28B.40.310 Model schools and training departments—Requisitioning of pupils—President may refuse admission. It shall thereupon be the duty of the board of the school district or districts with which such statement has been filed, to apportion for attendance to the said model school or training department, a sufficient number of pupils from the public schools under the supervision of said board as will furnish to The Evergreen State College the number of pupils required in order to maintain such facility: PROVIDED, That the president of said state college may refuse to accept any such pupil as in his or her judgment would tend to reduce the efficiency of said model school or training department. [2011 c 336 § 737; 1977 ex.s. c 169 § 75; 1969 ex.s. c 223 § 28B.40.310. Prior: 1907 c 97 § 2; RRS § 4613. Formerly RCW 28.81.060.]

Additional notes found at www.leg.wa.gov

Chapter 28B.45 RCW

BRANCH CAMPUSES

Sections

28B.45.014 Mission—Collaboration with community and technical colleges—Alternative models—Monitoring and evaluation—Reports to the legislature.

28B.45.020 Findings.

28B.45.014 Mission—Collaboration with community and technical colleges—Alternative models—Monitoring and evaluation—Reports to the legislature. (1) The primary mission of the higher education branch campuses created under this chapter remains to expand access to baccalaureate and graduate education in underserved urban areas of the state in collaboration with community and technical colleges. The top priority for each of the campuses is to expand courses and degree programs for transfer and graduate students. New degree programs should be driven by the educational needs and demands of students and the community, as

well as the economic development needs of local businesses and employers.

(2) Branch campuses shall collaborate with the community and technical colleges in their region to develop articulation agreements, dual admissions policies, and other partnerships to ensure that branch campuses serve as innovative models of a two plus two educational system. Other possibilities for collaboration include but are not limited to joint development of curricula and degree programs, colocation of instruction, and arrangements to share faculty.

(3) In communities where a private postsecondary institution is located, representatives of the private institution may be invited to participate in the conversation about meeting the baccalaureate and graduate needs in underserved urban areas of the state.

(4) However, the legislature recognizes there are alternative models for achieving this primary mission. Some campuses may have additional missions in response to regional needs and demands. At selected branch campuses, an innovative combination of instruction and research targeted to support regional economic development may be appropriate to meet the region's needs for both access and economic viability. Other campuses should focus on becoming models of a two plus two educational system through continuous improvement of partnerships and agreements with community and technical colleges. Still other campuses may be best suited to transition to a four-year university or be removed from designation as a branch campus entirely.

(5) The legislature recognizes that size, mix of degree programs, and proportion of lower versus upper division and graduate enrollments are factors that affect costs at branch campuses. However over time, the legislature intends that branch campuses be funded more similarly to regional universities.

(6) Subject to approval by the higher education coordinating board, in accordance with RCW 28B.76.230, research universities are authorized to develop doctoral degree programs at their branch campuses.

(7) The higher education coordinating board shall monitor and evaluate growth of the branch campuses and periodically report and make recommendations to the higher education committees of the legislature to ensure the campuses continue to follow the priorities established under this chapter. [2011 c 208 § 1; 2005 c 258 § 2; 2004 c 57 § 2.]

Findings—Intent—2005 c 258: "(1) Since their creation in 1989, the research university branch campuses have significantly expanded access to baccalaureate and graduate education for placebound students in Washington's urban and metropolitan cities. Furthermore, the campuses have contributed to community revitalization and economic development in their regions. The campuses have met their overall mission through the development of new degree programs and through collaboration with community and technical colleges. These findings were confirmed by a comprehensive review of the campuses by the Washington state institute for public policy in 2002 and 2003, and reaffirmed through legislation enacted in 2004 that directed four of the campuses to make recommendations for their future evolution.

(2) The self-studies conducted by the University of Washington Bothell, University of Washington Tacoma, Washington State University Tri-Cities, and Washington State University Vancouver reflect thoughtful and strategic planning and involved the input of numerous students, faculty, community and business leaders, community colleges, advisory committees, and board members. The higher education coordinating board's careful review provides a statewide context for the legislature to implement the next stage of the campuses.

(3) Concurrently, the higher education coordinating board has devel-

oped a strategic master plan for higher education that sets a goal of increasing the number of students who earn college degrees at all levels: Associate, baccalaureate, and graduate. The strategic master plan also sets a goal to increase the higher education system's responsiveness to the state's economic needs.

(4) The legislature finds that to meet both of the master plan's goals and to provide adequate educational opportunities for Washington's citizens, additional access is needed to baccalaureate degree programs. Expansion of the four campuses is one strategy for achieving the desired outcomes of the master plan. Other strategies must also be implemented through service delivery models that reflect both regional demands and statewide priorities.

(5) Therefore, the legislature intends to increase baccalaureate access and encourage economic development through overall expansion of upper division capacity, continued development of two plus two programs in some areas of the state, authorization of four-year university programs in other areas of the state, and creation of new types of baccalaureate programs on a pilot basis. These steps will make significant progress toward achieving the master plan goals, but the legislature will also continue to monitor the development of the higher education system and evaluate what additional changes or expansion may be necessary." [2005 c 258 § 1.]

28B.45.0201 Findings. The legislature finds that population growth in north King and south Snohomish counties has created a need to expand higher education and workforce training programs for the people living and working in those areas. In keeping with the recommendations of the higher education coordinating board, the legislature intends to help address those education and training needs through the creation of Cascadia Community College, expansion of educational opportunities at Lake Washington Institute of Technology, and support of the University of Washington's branch campus at Bothell-Woodinville. It is further the intention of the legislature, in keeping with the higher education coordinating board recommendations, that the Cascadia Community College and the University of Washington branch campus be collocated, and that the new community college and the University of Washington's branch campus work in partnership to ensure that properly prepared students from community colleges and other institutions are able to transfer smoothly to the branch campus.

The legislature further finds that a governing board for Cascadia Community College needs to be appointed and confirmed as expeditiously as possible. The legislature intends to work cooperatively with the governor to facilitate the appointment and confirmation of trustees for the college. [2011 c 118 § 2; 1994 c 217 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 28B.50 RCW

COMMUNITY AND TECHNICAL COLLEGES

Sections

28B.50.060	Director of the state system of community and technical colleges—Appointment—Term—Qualifications—Salary and travel expenses—Duties.
28B.50.090	College board—Powers and duties.
28B.50.100	Boards of trustees—Generally.
28B.50.1401	Lake Washington Institute of Technology board of trustees.
28B.50.272	Opportunity grant program—Student eligibility—Funding—Performance measures—Documentation—Annual summary. (<i>Effective July 1, 2012.</i>)
28B.50.350	Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Bonds—Requirements.
28B.50.360	Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees.
28B.50.465	Cost-of-living increases—Academic employees.

28B.50.468	Cost-of-living increases—Classified employees.
28B.50.515	Community and technical college innovation account—Expenditures—Strategic technology plan—Enterprise resource planning.
28B.50.785	Publication of transferable college-level courses—Course lists for one-year academic completion certificates and transferable degrees.
28B.50.795	Bachelor of science in nursing program—University Center of North Puget Sound. <i>(Contingent effective date.)</i>
28B.50.856	Faculty tenure—Evaluation of probationer by review committee—Progress report, acknowledgment of receipt—Recommendation as to tenure.
28B.50.860	Faculty tenure—Tenure retained upon administrative appointment.
28B.50.863	Faculty tenure—Review prior to dismissal—Scope—Recommendations of review committee.
28B.50.901	Repealed. <i>(Contingent effective date.)</i>
28B.50.902	Centers of excellence.

28B.50.060 Director of the state system of community and technical colleges—Appointment—Term—Qualifications—Salary and travel expenses—Duties. A director of the state system of community and technical colleges shall be appointed by the college board and shall serve at the pleasure of the college board. The director shall be appointed with due regard to the applicant's fitness and background in education, and knowledge of and recent practical experience in the field of educational administration particularly in institutions beyond the high school level. The college board may also take into consideration an applicant's proven management background even though not particularly in the field of education.

The director shall devote his or her time to the duties of his or her office and shall not have any direct pecuniary interest in or any stock or bonds of any business connected with or selling supplies to the field of education within this state, in keeping with chapter 42.52 RCW.

The director shall receive a salary to be fixed by the college board and shall be reimbursed for travel expenses incurred in the discharge of his or her official duties in accordance with RCW 43.03.050 and 43.03.060.

The director shall be the executive officer of the college board and serve as its secretary and under its supervision shall administer the provisions of this chapter and the rules and orders established thereunder and all other laws of the state. The director shall attend, but not vote at, all meetings of the college board. The director shall be in charge of offices of the college board and responsible to the college board for the preparation of reports and the collection and dissemination of data and other public information relating to the state system of community and technical colleges. At the direction of the college board, the director shall, together with the chair of the college board, execute all contracts entered into by the college board.

The director shall, with the approval of the college board: (1) Employ necessary assistant directors of major staff divisions who shall serve at the director's pleasure on such terms and conditions as the director determines, and (2) subject to the provisions of chapter 41.06 RCW the director shall, with the approval of the college board, appoint and employ such field and office assistants, clerks and other employees as may be required and authorized for the proper discharge of the functions of the college board and for whose services funds have been appropriated.

The board may, by written order filed in its office, delegate to the director any of the powers and duties vested in or

imposed upon it by this chapter. Such delegated powers and duties may be exercised by the director in the name of the college board. [2011 c 336 § 738; 1994 c 154 § 306; 1991 c 238 § 31; 1975-'76 2nd ex.s. c 34 § 75; 1973 1st ex.s. c 46 § 8; 1973 c 62 § 14; 1969 ex.s. c 261 § 20; 1969 ex.s. c 223 § 28B.50.060. Prior: 1967 ex.s. c 8 § 6.]

High-technology coordinating board, director or designee member of: RCW 28B.65.040.

Additional notes found at www.leg.wa.gov

28B.50.090 College board—Powers and duties. The college board shall have general supervision and control over the state system of community and technical colleges. In addition to the other powers and duties imposed upon the college board by this chapter, the college board shall be charged with the following powers, duties and responsibilities:

(1) Review the budgets prepared by the boards of trustees, prepare a single budget for the support of the state system of community and technical colleges and adult education, and submit this budget to the governor as provided in RCW 43.88.090;

(2) Establish guidelines for the disbursement of funds; and receive and disburse such funds for adult education and maintenance and operation and capital support of the college districts in conformance with the state and district budgets, and in conformance with chapter 43.88 RCW;

(3) Ensure, through the full use of its authority:

(a) That each college district, in coordination with colleges, within a regional area, shall offer thoroughly comprehensive educational, training, and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; and community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and workforce literacy programs and services;

(b) That each college district shall maintain an open-door policy, to the end that no student will be denied admission because of the location of the student's residence or because of the student's educational background or ability; that, insofar as is practical in the judgment of the college board, curriculum offerings will be provided to meet the educational and training needs of the community generally and the students thereof; and that all students, regardless of their differing courses of study, will be considered, known and recognized equally as members of the student body: PROVIDED, That the administrative officers of a community or technical college may deny admission to a prospective student or attendance to an enrolled student if, in their judgment, the student would not be competent to profit from the curriculum offerings of the college, or would, by his or her presence or conduct, create a disruptive atmosphere within the college not consistent with the purposes of the institution. This subsection (3)(b) shall not apply to competency, conduct, or presence associated with a disability in a person twenty-one years of age or younger attending a technical college;

(4) Prepare a comprehensive master plan for the development of community and technical college education and training in the state; and assist the office of financial management in the preparation of enrollment projections to support

plans for providing adequate college facilities in all areas of the state. The master plan shall include implementation of the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education under *RCW 28B.76.200 based on the community and technical college system's role and mission. The master plan shall also contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities;

(5) Define and administer criteria and guidelines for the establishment of new community and technical colleges or campuses within the existing districts;

(6) Establish criteria and procedures for modifying district boundary lines and consolidating district structures to form multiple campus districts consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended and in accordance therewith make such changes as it deems advisable;

(7) Establish minimum standards to govern the operation of the community and technical colleges with respect to:

(a) Qualifications and credentials of instructional and key administrative personnel, except as otherwise provided in the state plan for vocational education;

(b) Internal budgeting, accounting, auditing, and financial procedures as necessary to supplement the general requirements prescribed pursuant to chapter 43.88 RCW;

(c) The content of the curriculums and other educational and training programs, and the requirement for degrees and certificates awarded by the colleges;

(d) Standard admission policies;

(e) Eligibility of courses to receive state fund support; and

(f) Common student identifiers such that once a student has enrolled at any community or technical college he or she retains the same student identification upon transfer to any college district;

(8) Establish and administer criteria and procedures for all capital construction including the establishment, installation, and expansion of facilities within the various college districts;

(9) Encourage innovation in the development of new educational and training programs and instructional methods; coordinate research efforts to this end; and disseminate the findings thereof;

(10) Exercise any other powers, duties and responsibilities necessary to carry out the purposes of this chapter;

(11) Authorize the various community and technical colleges to offer programs and courses in other districts when it determines that such action is consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended;

(12) Notwithstanding any other law or statute regarding the sale of state property, sell or exchange and convey any or all interest in any community and technical college real and personal property, except such property as is received by a college district in accordance with RCW 28B.50.140(8), when it determines that such property is surplus or that such a sale or exchange is in the best interests of the community and technical college system;

(13) In order that the treasurer for the state board for community and technical colleges appointed in accordance with RCW 28B.50.085 may make vendor payments, the state treasurer will honor warrants drawn by the state board pro-

viding for an initial advance on July 1, 1982, of the current biennium and on July 1 of each succeeding biennium from the state general fund in an amount equal to twenty-four percent of the average monthly allotment for such budgeted biennium expenditures for the state board for community and technical colleges as certified by the office of financial management; and at the conclusion of such initial month and for each succeeding month of any biennium, the state treasurer will reimburse expenditures incurred and reported monthly by the state board treasurer in accordance with chapter 43.88 RCW: PROVIDED, That the reimbursement to the state board for actual expenditures incurred in the final month of each biennium shall be less the initial advance made in such biennium;

(14) Notwithstanding the provisions of subsection (12) of this section, may receive such gifts, grants, conveyances, devises, and bequests of real or personal property from private sources as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs and may sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof; and

(15) The college board shall have the power of eminent domain. [2011 c 109 § 1; 2010 c 246 § 3; 2009 c 64 § 4; 2004 c 275 § 57; 2003 c 130 § 6; 1991 c 238 § 33; 1982 c 50 § 1; 1981 c 246 § 2; 1979 c 151 § 20; 1977 ex.s. c 282 § 4; 1973 c 62 § 16; 1969 ex.s. c 261 § 21; 1969 ex.s. c 223 § 28B.50.090. Prior: 1967 ex.s. c 8 § 9.]

**Reviser's note:* RCW 28B.76.200 was repealed by 2011 1st sp.s. c 11 § 244, effective July 1, 2012.

Findings—Intent—2010 c 246: See note following RCW 28B.50.020.

Intent—2009 c 64: See note following RCW 28B.50.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Findings—Intent—2003 c 130: See note following RCW 28B.76.210.

Construction, reconstruction, equipping facilities—Financing: RCW 28B.50.340.

Development of budget: RCW 43.88.090.

Eminent domain: Title 8 RCW.

State budgeting, accounting, and reporting system: Chapter 43.88 RCW.

Additional notes found at www.leg.wa.gov

28B.50.100 Boards of trustees—Generally. There is hereby created a board of trustees for each college district as set forth in this chapter. Each board of trustees shall be composed of five trustees, who shall be appointed by the governor for terms commencing October 1st of the year in which appointed. In making such appointments the governor shall give consideration to geographical diversity, and representing labor, business, women, and racial and ethnic minorities, in the membership of the boards of trustees. The boards of trustees for districts containing technical colleges shall include at least one member from business and one member from labor.

The successors of the trustees initially appointed shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring

prior to the expiration of any term shall be appointed only for the remainder of the term. Each member shall serve until a successor is appointed and qualified.

Every trustee shall be a resident and qualified elector of the college district. No trustee may be an employee of the community and technical college system, a member of the board of directors of any school district, or a member of the governing board of any public or private educational institution.

Each board of trustees shall organize itself by electing a chair from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. Three members of the board shall constitute a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The district president, or if there be none, the president of the college, shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board.

Members of the boards of trustees may be removed for misconduct or malfeasance in office in the manner provided by RCW 28B.10.500. [2011 c 336 § 739; 1991 c 238 § 37; 1987 c 330 § 1001; 1983 c 224 § 1; 1979 ex.s. c 103 § 1; 1977 ex.s. c 282 § 2; 1973 c 62 § 17; 1969 ex.s. c 261 § 22; 1969 ex.s. c 223 § 28B.50.100. Prior: 1967 ex.s. c 8 § 10.]

Chief executive officer as secretary of board: RCW 28B.50.130.

Additional notes found at www.leg.wa.gov

28B.50.1401 Lake Washington Institute of Technology board of trustees. There is hereby created a board of trustees for district twenty-six and Lake Washington Vocational-Technical Institute, hereafter known as Lake Washington Institute of Technology. The members of the board shall be appointed pursuant to the provisions of RCW 28B.50.100. [2011 c 118 § 1; 1991 c 238 § 24.]

28B.50.272 Opportunity grant program—Student eligibility—Funding—Performance measures—Documentation—Annual summary. (Effective July 1, 2012.)

(1) To be eligible for participation in the opportunity grant program established in RCW 28B.50.271, a student must:

(a) Be a Washington resident student as defined in RCW 28B.15.012 enrolled in an opportunity grant-eligible program of study;

(b) Have a family income that is at or below two hundred percent of the federal poverty level using the most current guidelines available from the United States department of health and human services, and be determined to have financial need based on the free application for federal student aid; and

(c) Meet such additional selection criteria as the college board shall establish in order to operate the program within appropriated funding levels.

(2) Upon enrolling, the student must provide evidence of commitment to complete the program. The student must make satisfactory progress and maintain a cumulative 2.0 grade point average for continued eligibility. If a student's cumulative grade point average falls below 2.0, the student may petition the institution of higher education of attendance.

[2011 RCW Supp—page 558]

The qualified institution of higher education has the authority to establish a probationary period until such time as the student's grade point average reaches required standards.

(3) Subject to funds appropriated for this specific purpose, public qualified institutions of higher education shall receive an enhancement of one thousand five hundred dollars for each full-time equivalent student enrolled in the opportunity grant program whose income is below two hundred percent of the federal poverty level. The funds shall be used for individualized support services which may include, but are not limited to, college and career advising, tutoring, emergency child care, and emergency transportation. The qualified institution of higher education is expected to help students access all financial resources and support services available to them through alternative sources.

(4) The college board shall be accountable for student retention and completion of opportunity grant-eligible programs of study. It shall set annual performance measures and targets and monitor the performance at all qualified institutions of higher education. The college board must reduce funding at institutions of higher education that do not meet targets for two consecutive years, based on criteria developed by the college board.

(5) The college board and office of student financial assistance shall work together to ensure that students participating in the opportunity grant program are informed of all other state and federal financial aid to which they may be entitled while receiving an opportunity grant.

(6) The college board and office of student financial assistance shall document the amount of opportunity grant assistance and the types and amounts of other sources of financial aid received by participating students. Annually, they shall produce a summary of the data.

(7) The college board shall:

(a) Begin developing the program no later than August 1, 2007, with student enrollment to begin no later than January 14, 2008; and

(b) Submit a progress report to the legislature by December 1, 2008.

(8) The college board may, in implementing the opportunity grant program, accept, use, and expend or dispose of contributions of money, services, and property. All such moneys received by the college board for the program must be deposited in an account at a depository approved by the state treasurer. Only the college board or a duly authorized representative thereof may authorize expenditures from this account. In order to maintain an effective expenditure and revenue control, the account is subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditure of moneys in the account. [2011 1st sp.s. c 11 § 157; 2007 c 277 § 102.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Part headings not law—2007 c 277: See notes following RCW 28B.50.271.

28B.50.350 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Bonds—Requirements. For the purpose of financing the cost of any projects, the col-

lege board is hereby authorized to adopt the resolution or resolutions and prepare all other documents necessary for the issuance, sale, and delivery of the bonds or any part thereof at such time or times as it shall deem necessary and advisable. Said bonds:

- (1) Shall not constitute:
 - (a) An obligation, either general or special, of the state; or
 - (b) A general obligation of the college or of the college board;
- (2) Shall be:
 - (a) Either registered or in coupon form; and
 - (b) Issued in denominations of not less than one hundred dollars; and
 - (c) Fully negotiable instruments under the laws of this state; and
 - (d) Signed on behalf of the college board with the manual or facsimile signature of the chair of the board, attested by the secretary of the board, have the seal of the college board impressed thereon or a facsimile of such seal printed or lithographed in the bottom border thereof, and the coupons attached thereto shall be signed with the facsimile signatures of such chair and the secretary;
- (3) Shall state:
 - (a) The date of issue; and
 - (b) The series of the issue and be consecutively numbered within the series; and
 - (c) That the bond is payable both principal and interest solely out of the bond retirement fund created for retirement thereof;
 - (4) Each series of bonds shall bear interest, payable either annually or semiannually, as the board may determine;
 - (5) Shall be payable both principal and interest out of the bond retirement fund;
 - (6) Shall be payable at such times over a period of not to exceed forty years from date of issuance, at such place or places, and with such reserved rights of prior redemption, as the board may prescribe;
 - (7) Shall be sold in such manner and at such price as the board may prescribe;
 - (8) Shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal thereof and interest thereon and such other terms, conditions, covenants, and protective provisions safeguarding such payment, not inconsistent with RCW 28B.50.330 through 28B.50.400, and as found to be necessary by the board for the most advantageous sale thereof, which may include but not be limited to:
 - (a) A covenant that a reserve account shall be created in the bond retirement fund to secure the payment of the principal of and interest on all bonds issued and a provision made that certain amounts be set aside and maintained therein;
 - (b) A covenant that sufficient moneys may be transferred from the capital projects account of the college board issuing the bonds to the bond retirement fund of the college board when ordered by the board in the event there is ever an insufficient amount of money in the bond retirement fund to pay any installment of interest or principal and interest coming due on the bonds or any of them;
 - (c) A covenant fixing conditions under which bonds on a parity with any bonds outstanding may be issued.

The proceeds of the sale of all bonds, exclusive of accrued interest which shall be deposited in the bond retirement fund, shall be deposited in the state treasury to the credit of the capital projects account of the college board and shall be used solely for paying the costs of the projects, the costs of bond counsel and professional bond consultants incurred in issuing the bonds, and for the purposes set forth in subsection (8)(b) of this section;

(9) Shall constitute a prior lien and charge against the building fees of the community and technical colleges. [2011 c 336 § 740; 1991 c 238 § 50; 1985 c 390 § 55; 1971 ex.s. c 279 § 19; 1971 c 8 § 2; 1970 ex.s. c 59 § 2; 1970 ex.s. c 56 § 32; 1970 ex.s. c 15 § 19; 1969 ex.s. c 261 § 27; 1969 ex.s. c 232 § 106; 1969 ex.s. c 223 § 28B.50.350. Prior: 1967 ex.s. c 8 § 35.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Additional notes found at www.leg.wa.gov

28B.50.360 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees. Within thirty-five days from the date of start of each quarter all collected building fees of each such community and technical college shall be paid into the state treasury, and shall be credited as follows:

(1) On or before June 30th of each year the college board if issuing bonds payable out of building fees shall certify to the state treasurer the amounts required in the ensuing twelve-month period to pay and secure the payment of the principal of and interest on such bonds. The state treasurer shall thereupon deposit the amounts so certified in the community and technical college capital projects account. Such amounts of the funds deposited in the community and technical college capital projects account as are necessary to pay and secure the payment of the principal of and interest on the building bonds issued by the college board as authorized by this chapter shall be devoted to that purpose. If in any twelve-month period it shall appear that the amount certified by the college board is insufficient to pay and secure the payment of the principal of and interest on the outstanding building bonds, the state treasurer shall notify the college board and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal and interest on all such bonds then outstanding shall be fully met at all times.

(2) The community and technical college capital projects account is hereby created in the state treasury. The sums deposited in the capital projects account shall be appropriated and expended to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the state board for community and technical colleges in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto, engineering and architectural services provided by the *department of general administration, and for the payment of principal of and interest on any bonds issued for such purposes. During

the 2011-2013 biennium, sums in the capital projects account shall also be used for routine facility maintenance and utility costs.

(3) Funds available in the community and technical college capital projects account may also be used for certificates of participation under chapter 39.94 RCW. [2011 1st sp.s. c 48 § 7025; 2009 c 499 § 6; 2005 c 488 § 922; 2004 c 277 § 910; 2002 c 238 § 303; 2000 c 65 § 1; 1997 c 42 § 1; 1991 sp.s. c 13 §§ 47, 48; 1991 c 238 § 51. Prior: 1985 c 390 § 56; 1985 c 57 § 16; 1974 ex.s. c 112 § 4; 1971 ex.s. c 279 § 20; 1970 ex.s. c 15 § 20; prior: 1969 ex.s. c 261 § 28; 1969 ex.s. c 238 § 7; 1969 ex.s. c 223 § 28B.50.360; prior: 1967 ex.s. c 8 § 36.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Part headings not law—2005 c 488: "Part headings in this act are not any part of the law." [2005 c 488 § 956.]

Severability—2005 c 488: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 488 § 958.]

Effective dates—2005 c 488: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 16, 2005], except for sections 920 and 921 of this act, which take effect June 30, 2005." [2005 c 488 § 959.]

Severability—Effective dates—2004 c 277: See notes following RCW 89.08.550.

Severability—Effective date—2002 c 238: See notes following RCW 28B.30.730.

Transfer of moneys in community and technical college bond retirement fund to state general fund: RCW 28B.50.401 and 28B.50.402.

Additional notes found at www.leg.wa.gov

28B.50.465 Cost-of-living increases—Academic employees. (1) Academic employees of community and technical college districts shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "academic employee" has the same meaning as defined in RCW 28B.52.020.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, except as provided in (d) of this subsection, each college district shall receive a cost-of-living allocation sufficient to increase academic employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A college district shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the district's salary schedules, collective bargaining agreements, and other compensation policies. No later than the end of the fiscal year, each college district shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for academic employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year except for the 2011-2012 and 2012-2013 fiscal years, the state shall fully fund the cost-of-living increase set forth in this section.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2011 1st sp.s. c 18 § 2; 2009 c 573 § 2; 2003 1st sp.s. c 20 § 3; 2001 c 4 § 3 (Initiative Measure No. 732, approved November 7, 2000).]

Effective date—2011 1st sp.s. c 18: See note following RCW 28A.400.205.

Effective date—2009 c 573: See note following RCW 28A.400.205.

Severability—2001 c 4 (Initiative Measure No. 732): See note following RCW 28A.400.205.

28B.50.468 Cost-of-living increases—Classified employees. (1) Classified employees of technical colleges shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "technical college" has the same meaning as defined in RCW 28B.50.030. This section applies to only those classified employees under the jurisdiction of chapter 41.56 RCW.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, except as provided in (d) of this subsection, each technical college board of trustees shall receive a cost-of-living allocation sufficient to increase classified employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A technical college board of trustees shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the technical college's salary schedules, collective bargaining agreements, and other compensation policies. No later than the end of the fiscal year, each technical college shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for technical college classified employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year except for the 2011-2012 and 2012-2013 fiscal years, the state shall fully fund the cost-of-living increase set forth in this section.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2011 1st sp.s. c 18 § 3; 2009 c 573 § 3; 2003 1st sp.s. c 20 §

4; 2001 c 4 § 4 (Initiative Measure No. 732, approved November 7, 2000).]

Effective date—2011 1st sp.s. c 18: See note following RCW 28A.400.205.

Effective date—2009 c 573: See note following RCW 28A.400.205.

Severability—2001 c 4 (Initiative Measure No. 732): See note following RCW 28A.400.205.

28B.50.515 Community and technical college innovation account—Expenditures—Strategic technology plan—Enterprise resource planning. (1) The community and technical college innovation account is created in the custody of the state treasurer. All receipts from operating fees in RCW 28B.15.031(2) must be deposited into the account. Expenditures from the account may be used only as provided in subsection (2) of this section. Only the director of the college board or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the community and technical college innovation account may be used solely to:

(a) Pay and secure the payment of the principal of and interest on financing contracts, such as certificates of participation issued for the innovation account under chapter 39.94 RCW and authorized by the legislature; and

(b) Implement the college board's strategic technology plan to improve student achievement, student services, and increase systemwide administrative efficiencies. The college board must approve projects under the strategic technology plan to improve student achievement, student services, and increase systemwide administrative efficiencies before the director authorizes expenditures to be made. For large enterprise resource planning projects, the college board shall develop a technical and operational business plan and submit it to the legislature for approval before the project can be implemented.

(3) Consistent with the implementation of the strategic technology plan, the college board and the community and technical colleges shall engage in substantial business process reengineering and adopt systemwide approaches to admissions, financial aid, student identification numbers, student transcripts, and other systemwide processes.

(4) If the community and technical college system pursues an enterprise resource planning solution, they shall consider adoption of existing solutions already deployed at institutions of higher education in the state; short and long-term total costs of ownership; opportunities for partnerships, collaboration, coordination and consolidation with other entities in higher education; technical flexibility; and other requirements that support costs efficiencies. If the college board adopts a plan for an enterprise solution that is not coordinated with other institutions of higher education, authorization of expenditure of funds by the legislature must be approved by the office of financial management. [2011 c 274 § 3.]

Finding—Intent—2011 c 274: "(1) The legislature finds that the community and technical college system mission to ensure affordable access to higher education geographically distributed throughout the state is aligned with innovative approaches to learning and substantial efficiencies that have been implemented since the legislature established the system in 1967. Systemic approaches include a common accounting system, a common administrative computing system, a single system budget request for operating and

capital expenses, and common course numbering. Innovative approaches include the system's e-learning platform, the adoption of open educational resources, and the adoption of lecture-capture tools that allow students to replay lectures, review classroom materials, and distribute outstanding instruction via the web anytime, anywhere.

(2) It is the intent of the legislature to further enhance the community and technical college system by making the maximum use of technologies to:

(a) Help dismantle the barriers of geographic isolation, cost, competing demands of work and family life, and past educational failure;

(b) Create a system for learning that is welcoming to all, easy to enter and use, and tailored to the needs of each learner; and

(c) Foster personal relationships and support all students and their families to learn and thrive." [2011 c 274 § 1.]

28B.50.785 Publication of transferable college-level courses—Course lists for one-year academic completion certificates and transferable degrees. (1)(a) Community and technical colleges must identify and publish in their admissions materials the college-level courses that are recognized by all four-year institutions of higher education as transferable to the four-year institutions of higher education. Publication of the list of courses must be easily identified and accessible on the college's web site.

(b) If a four-year institution of higher education does not require courses of majors for transfer, the community and technical colleges must identify and publish the transfer policy of the institution in their admissions materials and make the transfer policy of the institution easily identifiable on the college's web site.

(2) Community and technical colleges must create a list of courses that satisfy the basic requirements, distribution requirements, and approved electives for:

(a) A one-year academic completion certificate as provided for under RCW 28B.10.696; and

(b) A transferrable associate of arts or sciences degree as provided for under RCW 28B.10.696.

(3) To the extent possible, each community and technical college must develop links between the lists in subsections (1) and (2) of this section and its list of courses, and develop methods to encourage students to check the lists in subsections (1) and (2) of this section when the students are registering for courses. [2011 1st sp.s. c 10 § 12.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

28B.50.795 Bachelor of science in nursing program—University Center of North Puget Sound. (Contingent effective date.) (1) Although Everett Community College offers an associate degree nursing program that graduates approximately seventy to ninety students per year, the University Center does not offer a bachelor of science in nursing. Some graduates of the Everett Community College program are able to articulate to the bachelor of science in nursing program offered by the University of Washington-Bothell at its Bothell campus or in Mt. Vernon but current capacity is not sufficient for all of the graduates who are both interested and qualified.

(2) Despite recent growth in nursing education capacity, shortages still persist for registered nurses. According to a June 2007 study by the Washington, Wyoming, Alaska, Montana, and Idaho center for health workforce studies, the average age of Washington's registered nurses was forty-

eight years. More than a third were fifty-five years of age or older. Consequently, the high rate of registered nurses retiring from nursing practice over the next two decades will significantly reduce the supply. This reduction comes at the same time as the state's population grows and ages. The registered nurse education capacity in Washington has a large impact on the supply of registered nurses in the state. If the rate of graduation in registered nursing does not increase, projections show that supply in Washington will begin to decline by 2015. In contrast, if graduation rates increased by four hundred per year, the supply of registered nurses would meet estimated demand by the year 2021.

(3) Subject to specific funding to support up to fifty full-time equivalent students in a bachelor of nursing program, the University Center of North Puget Sound, in partnership with the University of Washington-Bothell, shall offer a bachelor of science in nursing program with capacity for up to fifty full-time students. [2011 c 321 § 2; 2010 1st sp.s. c 25 § 1.]

Contingent effective date—2011 c 321: See note following RCW 28B.30.515.

Effective date—2010 1st sp.s. c 25: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2010." [2010 1st sp.s. c 25 § 2.]

28B.50.856 Faculty tenure—Evaluation of probationer by review committee—Progress report, acknowledgment of receipt—Recommendation as to tenure. The probationary faculty appointment period shall be one of continuing evaluation of a probationer by a review committee. The evaluation process shall place primary importance upon the probationer's effectiveness in his or her appointment. The review committee shall periodically advise each probationer, in writing, of his or her progress during the probationary period and receive the probationer's written acknowledgment thereof. The review committee shall at appropriate times make recommendations to the appointing authority as to whether tenure should or should not be granted to individual probationers: PROVIDED, That the final decision to award or withhold tenure shall rest with the appointing authority, after it has given reasonable consideration to the recommendations of the review committee. [2011 c 336 § 741; 1969 ex.s. c 283 § 36. Formerly RCW 28.85.856.]

Additional notes found at www.leg.wa.gov

28B.50.860 Faculty tenure—Tenure retained upon administrative appointment. A tenured faculty member, upon appointment to an administrative appointment shall be allowed to retain his or her tenure. [2011 c 336 § 742; 1977 ex.s. c 282 § 7; 1969 ex.s. c 283 § 38. Formerly RCW 28.85.860.]

Additional notes found at www.leg.wa.gov

28B.50.863 Faculty tenure—Review prior to dismissal—Scope—Recommendations of review committee. Prior to the dismissal of a tenured faculty member, or a faculty member holding an unexpired probationary faculty appointment, the case shall first be reviewed by a review committee. The review shall include testimony from all interested parties including, but not limited to, other faculty

[2011 RCW Supp—page 562]

members and students. The faculty member whose case is being reviewed shall be afforded the right of cross-examination and the opportunity to defend himself or herself. The review committee shall prepare recommendations on the action they propose be taken and submit such recommendations to the appointing authority prior to their final action. [2011 c 336 § 743; 1969 ex.s. c 283 § 41. Formerly RCW 28.85.863.]

Additional notes found at www.leg.wa.gov

28B.50.901 Repealed. (Contingent effective date.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.50.902 Centers of excellence. (1) The college board, in consultation with business, industry, labor, the workforce training and education coordinating board, the department of commerce, the employment security department, and community and technical colleges, shall designate centers of excellence and allocate funds to existing and new centers of excellence based on a competitive basis.

(2) Eligible applicants for the program established under this section include community and technical colleges. Priority shall be given to applicants that have an established education and training program serving the targeted industry and that have in their home district or region an industry cluster with the same targeted industry at its core.

(3) It is the role of centers of excellence to employ strategies to:

- (a) Create educational efficiencies;
- (b) Build a diverse, competitive workforce for strategic industries;
- (c) Maintain an institutional reputation for innovation and responsiveness;
- (d) Develop innovative curriculum and means of delivering education and training;
- (e) Act as brokers of information and resources related to community and technical college education and training and assistance available for firms in a targeted industry, including working with innovate Washington to develop methods to identify businesses within a targeted industry that could benefit from the services offered by innovate Washington under chapter 43.333 RCW; and
- (f) Serve as partners with workforce development councils, associate development organizations, and other workforce and economic development organizations.

(4) Examples of strategies under subsection (3) of this section include but are not limited to: Sharing curriculum and other instructional resources, to ensure cost savings to the system; delivering collaborative certificate and degree programs; and holding statewide summits, seminars, conferences, and workshops on industry trends and best practices in community and technical college education and training. [2011 1st sp.s. c 14 § 6; 2009 c 151 § 4.]

Effective date—2011 1st sp.s. c 14: See RCW 43.333.901.

Chapter 28B.67 RCW

CUSTOMIZED EMPLOYMENT TRAINING

Sections

28B.67.020 Customized employment training program created—Applications—Criteria—Rules. *(Expires July 1, 2012.)*

28B.67.020 Customized employment training program created—Applications—Criteria—Rules. *(Expires July 1, 2012.)* (1) The Washington customized employment training program is hereby created to provide training assistance to employers locating or expanding in the state.

(2)(a) Application to receive funding under this program shall be made to the board in a form and manner as specified by the board. Successful applicants shall receive a training allowance from the board to cover the costs of training at a qualified training institution. Employers may not receive an allowance for training costs which exceed the maximum annual training cost per employee, as established by the board, and are not eligible to receive an allowance or allowances of over five hundred thousand dollars per calendar year.

(b) Allowances shall be granted for applicants who meet the following criteria:

(i) The employer must have entered into an agreement with a qualified training institution to engage in customized training and the employer must agree to: (A) Upon completion of the training, make a payment to the employment training finance account created in RCW 28B.67.030 in an amount equal to one-quarter of the amount of the training allowance; and (B) over the subsequent eighteen months, make monthly or quarterly payments, as specified in the agreement, to the employment training finance account created in RCW 28B.67.030 in an amount equal to three-quarters of the amount of the training allowance. During calendar years 2009 and 2010, participants may delay payments due under this section for up to eighteen months. The payments into the employment training finance account provided for in this section do not constitute payment to the institution.

(ii) When hiring, the employer must make good faith efforts, as determined by the board, to hire from trainees in the participant’s training program. The agreement with the qualified training institution provided for in (b)(i) of this subsection shall specify terms for reimbursement or additional payment to the employment training finance account by the employer if the participant does not, when hiring, make good faith efforts to hire from trainees in the participant’s training program.

(iii) The training allowance may not be used to train workers who have been hired as a result of a strike or lockout.

(c) Preference shall be given to employers with fewer than fifty employees.

(d) Preference shall be given to training that leads to transferable skills that are interchangeable among different jobs, employers, or workplaces.

(3) Qualified training institutions may enter into agreements with four-year institutions of higher education, as defined in RCW 28B.10.016, in accordance with the interlocal cooperation act, chapter 39.34 RCW.

(4) The board and qualified training institutions may solicit and receive gifts, grants, funds, fees, and endowments,

in trust or otherwise, from tribal, local, federal, or other governmental entities, as well as private sources, for the purpose of providing training allowances under chapter 112, Laws of 2006. All revenue thus solicited and received shall be deposited into the employment training finance account created in RCW 28B.67.030.

(5) Qualified training institutions must make good faith efforts to develop training programs using trainers preferred by participants.

(6) For employers who (a) have requested training under the job skills program created under chapter 28C.04 RCW but are not able to participate in the job skills program because the funds have all been committed, and (b) desire to become participants in the Washington customized employment training program, the board shall ensure a seamless process toward participation.

(7) The board may adopt rules to implement this section.

(8) This section expires July 1, 2012. [2011 c 151 § 4. Prior: 2009 c 296 § 1; 2006 c 112 § 3.]

Chapter 28B.76 RCW

HIGHER EDUCATION COORDINATING BOARD

Sections

- 28B.76.010 Repealed. *(Effective July 1, 2012.)*
- 28B.76.020 Definitions. *(Effective July 1, 2012.)*
- 28B.76.030 Repealed. *(Effective July 1, 2012.)*
- 28B.76.040 Repealed. *(Effective July 1, 2012.)*
- 28B.76.050 Repealed. *(Effective July 1, 2012.)*
- 28B.76.060 Repealed. *(Effective July 1, 2012.)*
- 28B.76.070 Repealed. *(Effective July 1, 2012.)*
- 28B.76.080 Repealed. *(Effective July 1, 2012.)*
- 28B.76.090 Office created—Purpose—Director. *(Effective July 1, 2012.)*
- 28B.76.120 Adoption of rules. *(Effective July 1, 2012.)*
- 28B.76.200 Repealed. *(Effective July 1, 2012.)*
- 28B.76.210 Budget priorities and levels of funding—Guidelines for institutions—Review and evaluation of budget requests—Prioritized list—Recommendations.
- 28B.76.235 Master list of high school courses qualifying for postsecondary credit and qualifying examination scores—Publication on web site.
- 28B.76.260 Repealed. *(Effective July 1, 2012.)*
- 28B.76.270 Accountability monitoring and reporting system—Data requirements—Institution biennial plans and performance targets—Biennial reports to the legislature—Uniform dashboard format for display of data.
- 28B.76.280 Repealed. *(Effective July 1, 2012.)*
- 28B.76.300 Repealed.
- 28B.76.310 Development of methods and protocols for measuring educational costs.
- 28B.76.320 Repealed.
- 28B.76.325 Academic credit for prior learning—Goals—Work group—Reports.
- 28B.76.330 Repealed. *(Effective July 1, 2012.)*
- 28B.76.500 Student financial aid programs—Administration by office—College information web-based portal. *(Effective July 1, 2012.)*
- 28B.76.505 Scholarship endowment programs—Administration of funds. *(Effective July 1, 2012.)*
- 28B.76.510 Office to administer certain federal programs. *(Effective July 1, 2012.)*
- 28B.76.520 Federal funds, private gifts or grants—Office to administer. *(Effective July 1, 2012.)*
- 28B.76.525 State financial aid account. *(Effective July 1, 2012.)*
- 28B.76.530 Repealed. *(Effective July 1, 2012.)*
- 28B.76.540 Administrative responsibilities. *(Effective July 1, 2012.)*
- 28B.76.560 Distinguished professorship trust fund program—Establishment—Administration. *(Effective July 1, 2012.)*
- 28B.76.565 Distinguished professorship trust fund program—Trust fund established. *(Effective July 1, 2012.)*
- 28B.76.570 Distinguished professorship trust fund program—Guidelines—Allocation system. *(Effective July 1, 2012.)*

- 28B.76.575 Distinguished professorship trust fund program—Matching funds—Donations or appropriations—Disbursement of funds. (*Effective July 1, 2012.*)
- 28B.76.605 Graduate fellowship trust fund program—Establishment—Administration. (*Effective July 1, 2012.*)
- 28B.76.610 Graduate fellowship trust fund—Matching funds. (*Effective July 1, 2012.*)
- 28B.76.615 Graduate fellowship trust fund program—Guidelines—Allocation system. (*Effective July 1, 2012.*)
- 28B.76.620 Graduate fellowship trust fund program—Matching funds—Donations—Disbursement of funds. (*Effective July 1, 2012.*)
- 28B.76.640 Office to coordinate state participation within student exchange compact programs—Designate certifying officer. (*Effective July 1, 2012.*)
- 28B.76.645 Office to coordinate state participation within student exchange compact programs—Criteria—Washington interstate commission on higher education professional student exchange program trust fund. (*Effective July 1, 2012.*)
- 28B.76.650 Office to coordinate state participation within student exchange compact programs—Advice to governor, legislature. (*Effective July 1, 2012.*)
- 28B.76.660 Washington scholars award and Washington scholars-alternate award. (*Effective July 1, 2012.*)
- 28B.76.670 Washington award for vocational excellence—Grants—Definitions. (*Effective July 1, 2012.*)
- 28B.76.690 Border county higher education opportunity project—Administration. (*Effective July 1, 2012.*)
- 28B.76.695 Western Governors University - Washington—Recognition and endorsement—Rules.

28B.76.010 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.020 Definitions. (*Effective July 1, 2012.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Council" means the council for higher education.

(2) "Four-year institutions" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, and The Evergreen State College.

(3) "Major expansion" means expansion of the higher education system that requires significant new capital investment, including building new institutions, campuses, branches, or centers or conversion of existing campuses, branches, or centers that would result in a mission change.

(4) "Mission change" means a change in the level of degree awarded or institutional type not currently authorized in statute.

(5) "Office" means the office of student financial assistance. [2011 1st sp.s. c 11 § 101; 2010 c 245 § 4; 1985 c 370 § 2. Formerly RCW 28B.80.310.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: "Sections 101 through 103, 106 through 202, 204 through 244, and 301 of this act take effect July 1, 2012." [2011 1st sp.s. c 11 § 403.]

Intent—2011 1st sp.s. c 11: "The legislature recognizes that the state's higher education system plays a critical role in assuring Washington's continued leadership role in driving economic prosperity, innovation, and opportunity. By educating citizens for living wage jobs, producing world-class research, and helping to create vibrant communities, the state's institutions of higher education form a foundational component in assuring prosperity for our citizens.

The legislature also recognizes the significant contributions made by the higher education coordinating board in coordinating higher education policy and planning, and administering the state's financial aid programs. The board has also recently finished several significant planning efforts that will provide guidance to the legislature and to the institutions in forming priorities and deploying resources.

However, the legislature also recognizes the importance of prioritizing scarce resources for the core, front-line services that institutions provide—

namely instruction, research, and robust financial aid. During times of economic downturn, policymakers must focus on those areas of public service that have the most direct and immediate impact on students. Keeping class sections open, attracting the best professors and instructors, providing comprehensive support services, and offering meaningful financial help to offset the costs of attending school must be the main concerns of policymakers.

It is for these reasons that the legislature intends to create a new office dedicated entirely to the administration of student financial aid programs. By focusing financial and governance resources on direct aid to students, the state can provide the highest level of service in this area. The legislature further intends to eliminate many of the policy and planning functions of the higher education coordinating board and rededicate those resources to the higher education institutions that provide the core, front-line services associated with instruction and research. Given the unprecedented budget crises the state is facing, the state must take the opportunity to build on the recommendations of the board and use the dollars where they can make the most direct impact." [2011 1st sp.s. c 11 § 1.]

Findings—Expand on demand—System design plan endorsed—2010 c 245: See note following RCW 28B.50.020.

28B.76.030 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.040 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.050 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.060 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.070 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.080 Repealed. (*Effective July 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.090 Office created—Purpose—Director. (*Effective July 1, 2012.*) (1) The office of student financial assistance is created.

(2) The purpose of the office is to administer state and federal financial aid and other education services programs, including the advanced college tuition payment program in chapter 28B.95 RCW, in a cost-effective manner.

(3) The office shall employ a director who shall serve at the pleasure of the governor and shall administer the provisions of this chapter. The director shall: (a) Employ necessary deputy and assistant directors and other exempt staff under chapter 41.06 RCW who shall serve at his or her pleasure on such terms and conditions as he or she determines and (b) subject to the provisions of chapter 41.06 RCW, appoint and employ such other employees as may be required for the proper discharge of the functions of the office. [2011 1st sp.s. c 11 § 102; 2007 c 458 § 102; 2004 c 275 § 4; 1987 c 330 § 301; 1985 c 370 § 14. Formerly RCW 28B.80.430.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2007 c 458: See note following RCW 28B.76.050.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Additional notes found at www.leg.wa.gov

28B.76.120 Adoption of rules. (Effective July 1, 2012.) The office shall have authority to adopt rules as necessary to implement this chapter. [2011 1st sp.s. c 11 § 103; 1985 c 370 § 8. Formerly RCW 28B.80.370.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.76.200 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.210 Budget priorities and levels of funding—Guidelines for institutions—Review and evaluation of budget requests—Prioritized list—Recommendations.

(1) The *board shall collaborate with the four-year institutions including the council of presidents, the community and technical college system, and when appropriate the workforce training and education coordinating board, the superintendent of public instruction, and the independent higher educational institutions to identify budget priorities and levels of funding for higher education, including the two and four-year institutions of higher education and state financial aid programs. It is the intent of the legislature that recommendations from the *board reflect not merely the sum of budget requests from multiple institutions, but prioritized funding needs for the overall system of higher education.

(2) By December of each odd-numbered year, the *board shall distribute guidelines which outline the *board's fiscal priorities to the institutions and the state board for community and technical colleges.

(a) The institutions and the state board for community and technical colleges shall submit an outline of their proposed operating budgets to the *board no later than July 1st of each even-numbered year. Pursuant to guidelines developed by the *board, operating budget outlines submitted by the institutions and the state board for community and technical colleges after January 1, 2007, shall include all policy changes and enhancements that will be requested by the institutions and the state board for community and technical colleges in their respective biennial budget requests. Operating budget outlines shall include a description of each policy enhancement, the dollar amount requested, and the fund source being requested.

(b) Capital budget outlines for the two-year institutions shall be submitted by August 15th of each even-numbered year, and shall include the prioritized ranking of the capital projects being requested, a description of each capital project, and the amount and fund source being requested.

(c) Capital budget outlines for the four-year institutions must be submitted by August 15th of each even-numbered year, and must include: The institutions' priority ranking of the project; the capital budget category within which the project will be submitted to the office of financial manage-

ment in accordance with RCW 43.88D.010; a description of each capital project; and the amount and fund source being requested.

(d) The office of financial management shall reference these reporting requirements in its budget instructions.

(3) The *board shall review and evaluate the operating and capital budget requests from four-year institutions and the community and technical college system based on how the requests align with the *board's budget priorities, the missions of the institutions, and the statewide strategic master plan for higher education under **RCW 28B.76.200.

(4) The *board shall submit recommendations on the proposed operating budget and priorities to the office of financial management by October 1st of each even-numbered year, and to the legislature by January 1st of each odd-numbered year.

(5)(a) The *board's capital budget recommendations for the community and technical college system and the four-year institutions must be submitted to the office of financial management and to the legislature by November 15th of each even-numbered year.

(b) The *board shall develop one prioritized list of capital projects for the legislature to consider that includes all of the projects requested by the four-year institutions of higher education that were scored by the office of financial management pursuant to chapter 43.88D RCW, including projects that were previously scored but not funded. The prioritized list of capital projects shall be based on the following priorities in the following order:

(i) Office of financial management scores pursuant to chapter 43.88D RCW;

(ii) Preserving assets;

(iii) Degree production; and

(iv) Maximizing efficient use of instructional space.

(c) The *board shall include all of the capital projects requested by the four-year institutions of higher education, except for the minor works projects, in the prioritized list of capital projects provided to the legislature.

(d) The form of the prioritized list for capital projects requested by the four-year institutions of higher education shall be provided as one list, ranked in priority order with the highest priority project ranked number "1" through the lowest priority project numbered last. The ranking for the prioritized list of capital projects may not:

(i) Include subpriorities;

(ii) Be organized by category;

(iii) Assume any state bond or building account biennial funding level to prioritize the list; or

(iv) Assume any specific share of projects by institution in the priority list.

(6) Institutions and the state board for community and technical colleges shall submit any supplemental budget requests and revisions to the *board at the same time they are submitted to the office of financial management. The *board shall submit recommendations on the proposed supplemental budget requests to the office of financial management by November 1st and to the legislature by January 1st. [2011 1st sp.s. c 11 § 104; 2010 c 245 § 10; 2008 c 205 § 4; 2007 c 458 § 202; 2004 c 275 § 7; 2003 c 130 § 3; 1997 c 369 § 10; 1996 c 174 § 1; 1993 c 363 § 6; 1985 c 370 § 4. Formerly RCW 28B.80.330.]

Reviser's note: *(1) The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

***(2) RCW 28B.76.200 was repealed by 2011 1st sp.s. c 11 § 244, effective July 1, 2012.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Expand on demand—System design plan endorsed—2010 c 245: See note following RCW 28B.50.020.

Findings—Intent—2008 c 205: See RCW 43.88D.005.

Part headings not law—2007 c 458: See note following RCW 28B.76.050.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Findings—Intent—2003 c 130: "(1) The legislature finds that:

(a) At the time the higher education coordinating board was created in 1985, the legislature wanted a board with a comprehensive mission that included planning, budget and program review authority, and program administration;

(b) Since its creation, the board has achieved numerous accomplishments, including proposals leading to creation of the branch campus system, and has made access and affordability of higher education a consistent priority;

(c) However, higher education in Washington state is currently at a crossroads. Demographic, economic, and technological changes present new and daunting challenges for the state and its institutions of higher education. As the state looks forward to the future, the legislature, the governor, and institutions need a common strategic vision to guide planning and decision making.

(2) Therefore, it is the legislature's intent to reaffirm and strengthen the strategic planning role of the higher education coordinating board. It is also the legislature's intent to examine options for reassigning or altering other roles and responsibilities to enable the board to place priority and focus on planning and coordination." [2003 c 130 § 1.]

Findings—1993 c 363: "The legislature finds a need to redefine the relationship between the state and its postsecondary education institutions through a compact based on trust, evidence, and a new alignment of responsibilities. As the proportion of the state budget dedicated to postsecondary education programs has continued to decrease and the opportunity for this state's citizens to participate in such programs also has declined, the state institutions of higher education have increasingly less flexibility to respond to emerging challenges through innovative management and programming. The legislature finds that this state has not provided its institutions of higher education with the ability to effectively achieve statewide goals and objectives to increase access to, improve the quality of, and enhance the accountability for its postsecondary education system.

Therefore, the legislature declares that the policy of the state of Washington is to create an environment in which the state institutions of higher education have the authority and flexibility to enhance attainment of statewide goals and objectives for the state's postsecondary education system through decisions and actions at the local level. The policy shall have the following attributes:

(1) The accomplishment of equitable and adequate enrollment by significantly raising enrollment lids, adequately funding those increases, and providing sufficient financial aid for the neediest students;

(2) The development and use of a new definition of quality measured by effective operations and clear results; the efficient use of funds to achieve well-educated students;

(3) The attainment of a new resource management relationship that removes the state from micromanagement, allows institutions greater management autonomy to focus resources on essential functions, and encourages innovation; and

(4) The development of a system of coordinated planning and sufficient feedback to assure policymakers and citizens that students are succeeding and resources are being prudently deployed." [1993 c 363 § 1.]

Industrial project of statewide significance—Defined: RCW 43.157.010.

Additional notes found at www.leg.wa.gov

28B.76.235 Master list of high school courses qualifying for postsecondary credit and qualifying examination scores—Publication on web site. The *higher education coordinating board shall annually publish on its web site the agreed-upon list of high school courses qualifying for post-

[2011 RCW Supp—page 566]

secondary credit under RCW 28B.10.053 and examination qualifying scores and demonstrated competencies meeting the postsecondary requirements for a certificate or technical degree, a two-year academic transfer degree, or the lower division requirements for a baccalaureate degree. [2011 c 77 § 4.]

***Reviser's note:** The higher education coordinating board was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Findings—Intent—Short title—2011 c 77: See notes following RCW 28A.230.130.

28B.76.260 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.270 Accountability monitoring and reporting system—Data requirements—Institution biennial plans and performance targets—Biennial reports to the legislature—Uniform dashboard format for display of data. (1) The board shall establish an accountability monitoring and reporting system as part of a continuing effort to make meaningful and substantial progress towards the achievement of long-term performance goals in higher education.

(2) To provide consistent, easily understood data among the public four-year institutions of higher education within Washington and in other states, the following data must be reported annually by December 1st, and at a minimum include data recommended by a national organization representing state chief executives. The board may change the data requirements to be consistent with best practices across the country. This data must, to the maximum extent possible, be disaggregated by race and ethnicity, gender, state and county of origin, age, and socioeconomic status, and include the following for the four-year institutions of higher education:

(a) Bachelor's degrees awarded;

(b) Graduate and professional degrees awarded;

(c) Graduation rates: The number and percentage of students who graduate within four years for bachelor's degrees and within the extended time, which is six years for bachelor's degrees;

(d) Transfer rates: The annual number and percentage of students who transfer from a two-year to a four-year institution of higher education;

(e) Time and credits to degree: The average length of time in years and average number of credits that graduating students took to earn a bachelor's degree;

(f) Enrollment in remedial education: The number and percentage of entering first-time undergraduate students who place into and enroll in remedial mathematics, English, or both;

(g) Success beyond remedial education: The number and percentage of entering first-time undergraduate students who complete entry college-level math and English courses within the first two consecutive academic years;

(h) Credit accumulation: The number and percentage of first-time undergraduate students completing two quarters or one semester worth of credit during their first academic year;

(i) Retention rates: The number and percentage of entering undergraduate students who enroll consecutively from

fall-to-spring and fall-to-fall at an institution of higher education;

(j) Course completion: The percentage of credit hours completed out of those attempted during an academic year;

(k) Program participation and degree completion rates in bachelor and advanced degree programs in the sciences, which includes agriculture and natural resources, biology and biomedical sciences, computer and information sciences, engineering and engineering technologies, health professions and clinical sciences, mathematics and statistics, and physical sciences and science technologies, including participation and degree completion rates for students from traditionally underrepresented populations;

(l) Annual enrollment: Annual unduplicated number of students enrolled over a twelve-month period at institutions of higher education including by student level;

(m) Annual first-time enrollment: Total first-time students enrolled in a four-year institution of higher education;

(n) Completion ratio: Annual ratio of undergraduate and graduate degrees and certificates, of at least one year in expected length, awarded per one hundred full-time equivalent undergraduate students at the state level;

(o) Market penetration: Annual ratio of undergraduate and graduate degrees and certificates, of at least one year in program length, awarded relative to the state's population age eighteen to twenty-four years old with a high school diploma;

(p) Student debt load: Median three-year distribution of debt load, excluding private loans or debts incurred before coming to the institution;

(q) Data related to enrollment, completion rates, participation rates, and debt load shall be disaggregated for students in the following income brackets to the maximum extent possible:

(i) Up to seventy percent of the median family income;

(ii) Between seventy-one percent and one hundred twenty-five percent of the median family income; and

(iii) Above one hundred twenty-five percent of the median family income; and

(r) Yearly percentage increases in the average cost of undergraduate instruction.

(3) Four-year institutions of higher education must count all students when collecting data, not only first-time, full-time freshmen.

(4) Based on guidelines prepared by the board, each four-year institution and the state board for community and technical colleges shall submit a biennial plan to achieve measurable and specific improvements each academic year on statewide and institution-specific performance measures. Plans shall be submitted to the board along with the biennial budget requests from the institutions and the state board for community and technical colleges. Performance measures established for the community and technical colleges shall reflect the role and mission of the colleges.

(5) The board shall approve biennial performance targets for each four-year institution and for the community and technical college system and shall review actual achievements annually. The state board for community and technical colleges shall set biennial performance targets for each college or district, where appropriate.

(6) The board shall submit a report on progress towards the statewide goals, with recommendations for the ensuing

biennium, to the fiscal and higher education committees of the legislature along with the board's biennial budget recommendations.

(7) The board, in collaboration with the four-year institutions and the state board for community and technical colleges, shall periodically review and update the accountability monitoring and reporting system.

(8) The board shall develop measurable indicators and benchmarks for its own performance regarding cost, quantity, quality, and timeliness and including the performance of committees and advisory groups convened under this chapter to accomplish such tasks as improving transfer and articulation, improving articulation with the K-12 education system, measuring educational costs, or developing data protocols. The board shall submit its accountability plan to the legislature concurrently with the biennial report on institution progress.

(9) In conjunction with the office of financial management, all four-year institutions of higher education must display the data described in subsection (2) of this section in a uniform dashboard format on the office of financial management's web site no later than December 1, 2011, and updated thereafter annually by December 1st. To the maximum extent possible, the information must be viewable by race and ethnicity, gender, state and county of origin, age, and socioeconomic status. The information may be tailored to meet the needs of various target audiences such as students, researchers, and the general public. [2011 1st sp.s. c 10 § 8; 2004 c 275 § 11.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.76.280 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.300 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.310 Development of methods and protocols for measuring educational costs. (1) The *board, in consultation with the house of representatives and senate committees responsible for higher education, the respective fiscal committees of the house of representatives and senate, the office of financial management, the state board for community and technical colleges, and the state institutions of higher education, shall develop standardized methods and protocols for measuring the undergraduate and graduate educational costs for the state universities, regional universities, and community colleges, including but not limited to the costs of instruction, costs to provide degrees in specific fields, and costs for precollege remediation.

(2) The institutions of higher education shall participate in the development of cost study methods and shall provide all necessary data in a timely fashion consistent with the protocols developed. [2011 1st sp.s. c 11 § 105; 2004 c 275 § 15; 1995 1st sp.s. c 9 § 7; 1992 c 231 § 5; 1989 c 245 § 3. Prior: 1985 c 390 § 16; 1985 c 370 § 65; 1982 1st ex.s. c 37 § 16;

1981 c 257 § 3; 1977 ex.s. c 322 § 7. Formerly RCW 28B.15.070.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

Additional notes found at www.leg.wa.gov

28B.76.320 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.325 Academic credit for prior learning—Goals—Work group—Reports. (1) The *board, the state board for community and technical colleges, the council of presidents, the four-year institutions of higher education, the private independent higher education institutions, and the private career schools shall collaborate to carry out the following goals:

(a) Increase the number of students who receive academic credit for prior learning and the number of students who receive credit for prior learning that counts towards their major or towards earning their degree, certificate, or credential, while ensuring that credit is awarded only for high quality, course-level competencies;

(b) Increase the number and type of academic credits accepted for prior learning in institutions of higher education, while ensuring that credit is awarded only for high quality, course-level competencies;

(c) Develop transparent policies and practices in awarding academic credit for prior learning;

(d) Improve prior learning assessment practices across the institutions of higher education;

(e) Create tools to develop faculty and staff knowledge and expertise in awarding credit for prior learning and to share exemplary policies and practices among institutions of higher education;

(f) Develop articulation agreements when patterns of credit for prior learning are identified for particular programs and pathways; and

(g) Develop outcome measures to track progress on the goals outlined in this section.

(2) The *board shall convene the academic credit for prior learning work group.

(a) The work group must include the following members:

(i) One representative from the *higher education coordinating board;

(ii) One representative from the state board for community and technical colleges;

(iii) One representative from the council of presidents;

(iv) Two representatives each from faculty from two and four-year institutions of higher education;

(v) Two representatives from private career schools;

(vi) Two representatives from business; and

(vii) Two representatives from labor.

(b) The purpose of the work group is to coordinate and implement the goals in subsection (1) of this section.

[2011 RCW Supp—page 568]

(3) The *board shall report progress on the goals and outcome measures annually by December 31st.

(4) For the purposes of this section, "prior learning" means the knowledge and skills gained through work and life experience; through military training and experience; and through formal and informal education and training from in-state and out-of-state institutions including foreign institutions. [2011 1st sp.s. c 10 § 28.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

28B.76.330 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.500 Student financial aid programs—Administration by office—College information web-based portal. (Effective July 1, 2012.) (1) The office shall administer any state program or state-administered federal program of student financial aid now or hereafter established.

(2) Each of the student financial aid programs administered by the office shall be labeled an "opportunity pathway." Loans provided by the federal government and aid granted to students outside of the financial aid package provided through institutions of higher education are not subject to the labeling provisions in this subsection. All communication materials, including, but not limited to, printed materials, presentations, and web content, shall include the "opportunity pathway" label.

(3) If the office develops a one-stop college information web-based portal that includes financial, academic, and career planning information, the portal shall display all available student financial aid programs, except federal student loans and aid granted to students outside of the financial aid package provided through institutions of higher education, under the "opportunity pathway" label. The portal shall also display information regarding federal tax credits related to higher education available for students or their families.

(4) The labeling requirements in this section do not change the source, eligibility requirements, or student obligations associated with each program. The office shall customize its communications to differentiate between programs, eligibility requirements, and student obligations, so long as the reporting provisions of this chapter are also fulfilled. [2011 1st sp.s. c 11 § 106; 2009 c 215 § 7; 1985 c 370 § 23; 1975 1st ex.s. c 132 § 15. Prior: 1969 ex.s. c 263 § 7. Formerly RCW 28B.80.240, 28.90.160, 28B.81.070.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—Effective date—2009 c 215: See notes following RCW 28B.92.030.

Additional notes found at www.leg.wa.gov

28B.76.505 Scholarship endowment programs—Administration of funds. (Effective July 1, 2012.) (1) The investment of funds from all scholarship endowment programs administered by the office shall be managed by the state investment board.

(2) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment money in scholarship endowment funds. All investment and operating costs associated with the investment of a scholarship endowment fund shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investments of the fund belong to the fund.

(3) Funds from all scholarship endowment programs administered by the *board shall be in the custody of the state treasurer.

(4) All investments made by the state investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policies established by the state investment board.

(5) As deemed appropriate by the state investment board, money in a scholarship endowment fund may be commingled for investment with other funds subject to investment by the state investment board.

(6) The authority to establish all policies relating to scholarship endowment funds, other than the investment policies in subsections (2) through (5) of this section, resides with the office.

(7) The office may request and accept moneys from the state investment board. With the exception of expenses of the state investment board in subsection (2) of this section, disbursements from the fund shall be made only on the authorization of the office and money in the fund may be spent only for the purposes of the endowment programs as specified in the authorizing chapter of each program.

(8) The state investment board shall routinely consult and communicate with the office on the investment policy, earnings of the scholarship endowment funds, and related needs of the programs. [2011 1st sp.s. c 11 § 107; 2007 c 73 § 1.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.76.510 Office to administer certain federal programs. (Effective July 1, 2012.) The office shall administer any federal act pertaining to higher education which is not administered by another state agency. [2011 1st sp.s. c 11 § 108; 1985 c 370 § 21; 1975 1st ex.s. c 132 § 12. Prior: 1969 ex.s. c 263 § 3. Formerly RCW 28B.80.210, 28.90.120, 28B.81.030.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.76.520 Federal funds, private gifts or grants—Office to administer. (Effective July 1, 2012.) The office is authorized to receive and expend federal funds and any private gifts or grants, such federal funds or private funds to be expended in accordance with the conditions contingent in

such grant thereof. [2011 1st sp.s. c 11 § 109; 1985 c 370 § 22; 1975 1st ex.s. c 132 § 14. Prior: 1969 ex.s. c 263 § 5. Formerly RCW 28B.80.230, 28.90.140, 28B.81.050.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.76.525 State financial aid account. (Effective July 1, 2012.) (1) The state financial aid account is created in the custody of the state treasurer. The primary purpose of the account is to ensure that all appropriations designated for financial aid through statewide student financial aid programs are made available to eligible students. The account shall be a nontreasury account.

(2) The office shall deposit in the account all money received for the state need grant program established under RCW 28B.92.010, the state work-study program established under chapter 28B.12 RCW, the Washington scholars program established under RCW 28A.600.110, the Washington award for vocational excellence program established under RCW 28C.04.525, and the educational opportunity grant program established under *chapter 28B.101 RCW. The account shall consist of funds appropriated by the legislature for the programs listed in this subsection and private contributions to the programs. Moneys deposited in the account do not lapse at the close of the fiscal period for which they were appropriated. Both during and after the fiscal period in which moneys were deposited in the account, the office may expend moneys in the account only for the purposes for which they were appropriated, and the expenditures are subject to any other conditions or limitations placed on the appropriations.

(3) Expenditures from the account shall be used for scholarships to students eligible for the programs according to program rules and policies.

(4) Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW.

(5) Only the director of the office or the director's designee may authorize expenditures from the account. [2011 1st sp.s. c 11 § 110; 2005 c 139 § 1.]

***Reviser's note:** Chapter 28B.101 RCW was repealed in its entirety by 2009 c 215 § 15, effective August 1, 2011.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.76.530 Repealed. (Effective July 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.76.540 Administrative responsibilities. (Effective July 1, 2012.) In addition to administrative responsibilities assigned in this chapter, the office shall administer the programs set forth in the following statutes: RCW 28A.600.100 through 28A.600.150 (Washington scholars); chapter 28B.85 RCW (degree-granting institutions); chapter 28B.92 RCW (state need grant); chapter 28B.12 RCW (work study); RCW 28B.15.543 (tuition waivers for Washington scholars); RCW 28B.15.760 through 28B.15.766 (math and science loans); RCW 28B.15.100 (reciprocity agreement);

RCW 28B.15.730 through 28B.15.734 (Oregon reciprocity); RCW 28B.15.750 and 28B.15.752 (Idaho reciprocity); RCW 28B.15.756 (British Columbia reciprocity); *chapter 28B.101 RCW (educational opportunity grant); chapter 28B.102 RCW (future teachers conditional scholarship); chapter 28B.108 RCW (American Indian endowed scholarship); chapter 28B.109 RCW (Washington international exchange scholarship); chapter 28B.115 RCW (health professional conditional scholarship); chapter 28B.119 RCW (Washington promise scholarship); and chapter 28B.133 RCW (gaining independence for students with dependents). [2011 1st sp.s. c 11 § 111; 2004 c 275 § 18; 1998 c 245 § 24; 1995 1st sp.s. c 9 § 12; 1990 c 33 § 561; 1986 c 136 § 20; 1985 c 370 § 7. Formerly RCW 28B.80.360.]

***Reviser's note:** Chapter 28B.101 RCW was repealed in its entirety by 2009 c 215 § 15, effective August 1, 2011.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Intent—Purpose—Effective date—1995 1st sp.s. c 9: See notes following RCW 28B.15.031.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Additional notes found at www.leg.wa.gov

28B.76.560 Distinguished professorship trust fund program—Establishment—Administration. (Effective July 1, 2012.) The Washington distinguished professorship trust fund program is established.

The program shall be administered by the office.

The trust fund shall be administered by the state treasurer. [2011 1st sp.s. c 11 § 112; 1987 c 8 § 2. Formerly RCW 28B.10.867.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.76.565 Distinguished professorship trust fund program—Trust fund established. (Effective July 1, 2012.) Funds appropriated by the legislature for the distinguished professorship program shall be deposited in the distinguished professorship trust fund. At the request of the office under RCW 28B.76.575, the treasurer shall release the state matching funds to the designated institution's local endowment fund. No appropriation is required for expenditures from the fund. During the 2009-2011 fiscal biennium, the legislature may transfer from the distinguished professorship trust fund to the state general fund such amounts as reflect the excess fund balance in the account. [2011 1st sp.s. c 11 § 113; 2010 1st sp.s. c 37 § 915; 2009 c 564 § 1805; 2004 c 275 § 20; 1991 sp.s. c 13 § 99; 1987 c 8 § 3. Formerly RCW 28B.10.868.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

[2011 RCW Supp—page 570]

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Additional notes found at www.leg.wa.gov

28B.76.570 Distinguished professorship trust fund program—Guidelines—Allocation system. (Effective July 1, 2012.) In consultation with the eligible institutions of higher education, the office shall set guidelines for the program. These guidelines may include an allocation system based on factors which include but are not limited to: The amount of money available in the trust fund; characteristics of the institutions including the size of the faculty and student body; and the number of professorships previously received.

Any allocation system shall be superseded by conditions in any act of the legislature appropriating funds for this program. [2011 1st sp.s. c 11 § 114; 1987 c 8 § 4. Formerly RCW 28B.10.869.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.76.575 Distinguished professorship trust fund program—Matching funds—Donations or appropriations—Disbursement of funds. (Effective July 1, 2012.)

All state four-year institutions of higher education shall be eligible for matching trust funds. An institution may apply to the office for two hundred fifty thousand dollars from the fund when the institution can match the state funds with an equal amount of pledged or contributed private donations or with funds received through legislative appropriation specifically for the G. Robert Ross distinguished faculty award and designated as being qualified to be matched from trust fund moneys. These donations shall be made specifically to the professorship program, and shall be donated after July 1, 1985.

Upon an application by an institution, the office may designate two hundred fifty thousand dollars from the trust fund for that institution's pledged professorship. If the pledged two hundred fifty thousand dollars is not received within three years, the office shall make the designated funds available for another pledged professorship.

Once the private donation is received by the institution, the office shall ask the state treasurer to release the state matching funds to a local endowment fund established by the institution for the professorship. [2011 1st sp.s. c 11 § 115; 1988 c 125 § 3; 1987 c 8 § 5. Formerly RCW 28B.10.870.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.76.605 Graduate fellowship trust fund program—Establishment—Administration. (Effective July 1, 2012.) The Washington graduate fellowship trust fund program is established. The program shall be administered by the office. The trust fund shall be administered by the state treasurer. [2011 1st sp.s. c 11 § 116; 1987 c 147 § 2. Formerly RCW 28B.10.881.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.76.610 Graduate fellowship trust fund—Matching funds. (*Effective July 1, 2012.*) Funds appropriated by the legislature for the graduate fellowship program shall be deposited in the graduate fellowship trust fund. At the request of the office under RCW 28B.76.620, the treasurer shall release the state matching funds to the designated institution's local endowment fund. No appropriation is required for expenditures from the fund. During the 2009-2011 fiscal biennium, the legislature may transfer from the graduate fellowship trust fund to the state general fund such amounts as reflect the excess fund balance in the account. [2011 1st sp.s. c 11 § 117; 2010 1st sp.s. c 37 § 916; 2009 c 564 § 1806; 2004 c 275 § 22; 1991 sp.s. c 13 § 88; 1987 c 147 § 3. Formerly RCW 28B.10.882.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Additional notes found at www.leg.wa.gov

28B.76.615 Graduate fellowship trust fund program—Guidelines—Allocation system. (*Effective July 1, 2012.*) In consultation with eligible institutions of higher education, the office shall set guidelines for the program. These guidelines may include an allocation system based on factors which include but are not limited to: The amount of money available in the trust fund; characteristics of the institutions including the size of the faculty and student body; and the number of fellowships previously received.

Any allocation system shall be superseded by conditions in any legislative act appropriating funds for the program. [2011 1st sp.s. c 11 § 118; 1987 c 147 § 4. Formerly RCW 28B.10.883.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.76.620 Graduate fellowship trust fund program—Matching funds—Donations—Disbursement of funds. (*Effective July 1, 2012.*) (1) All state four-year institutions of higher education shall be eligible for matching trust funds. Institutions may apply to the office for twenty-five thousand dollars from the fund when they can match the state funds with equal pledged or contributed private donations. These donations shall be made specifically to the graduate fellowship program, and shall be donated after July 1, 1987.

(2) Upon an application by an institution, the office may designate twenty-five thousand dollars from the trust fund for that institution's pledged graduate fellowship fund. If the pledged twenty-five thousand dollars is not received within two years, the office shall make the designated funds available for another pledged graduate fellowship fund.

(3) Once the private donation is received by the institution, the office shall ask the state treasurer to release the state matching funds to a local endowment fund established by the institution for the graduate fellowships. [2011 1st sp.s. c 11 § 119; 1987 c 147 § 5. Formerly RCW 28B.10.884.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.76.640 Office to coordinate state participation within student exchange compact programs—Designate certifying officer. (*Effective July 1, 2012.*) The office is hereby specifically directed to develop such state plans as are necessary to coordinate the state of Washington's participation within the student exchange compact programs under the auspices of the Western Interstate Commission for Higher Education, as provided by chapter 28B.70 RCW. In addition to establishing such plans the office shall designate the state certifying officer for student programs. [2011 1st sp.s. c 11 § 120; 1985 c 370 § 17; 1974 ex.s. c 4 § 3. Formerly RCW 28B.80.150.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.76.645 Office to coordinate state participation within student exchange compact programs—Criteria—Washington interstate commission on higher education professional student exchange program trust fund. (*Effective July 1, 2012.*) In the development of any such plans as called for within RCW 28B.76.640, the office shall use at least the following criteria:

(1) Students who are eligible to attend compact-authorized programs in other states shall meet the Washington residency requirements of chapter 28B.15 RCW prior to being awarded tuition assistance.

(2) For recipients named after January 1, 1995, the tuition assistance shall be in the form of loans that may be completely forgiven in exchange for the student's service within the state of Washington after graduation. The requirements for such service and provisions for loan forgiveness shall be determined in rules adopted by the office.

(3) If appropriations are insufficient to fund all students qualifying under subsection (1) of this section, then the plans shall include criteria for student selection that would be in the best interest in meeting the state's educational needs, as well as recognizing the financial needs of students.

(4) Receipts from the payment of principal or interest or any other subsidies to which the office as administrator is entitled, that are paid by or on behalf of participants under this section, shall be deposited with the office and placed in an account created in this section and shall be used to cover the costs of granting the scholarships, maintaining necessary records, and making collections. The office shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional loans to eligible students.

(5) The Washington interstate commission on higher education professional student exchange program trust fund is created in the custody of the state treasurer. All receipts from loan repayment shall be deposited into the fund. Only the office, or its designee, may authorize expenditures from the fund. No appropriation is required for expenditures from this fund. [2011 1st sp.s. c 11 § 121; 2004 c 275 § 23; 1995 c

217 § 1; 1985 c 370 § 18; 1974 ex.s. c 4 § 4. Formerly RCW 28B.80.160.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Additional notes found at www.leg.wa.gov

28B.76.650 Office to coordinate state participation within student exchange compact programs—Advice to governor, legislature. (Effective July 1, 2012.) The office shall periodically advise the governor and the legislature of the policy implications of the state of Washington's participation in the Western Interstate Commission for Higher Education student exchange programs as they affect long-range planning for post-secondary education, together with recommendations on the most efficient way to provide high cost or special educational programs to Washington residents. [2011 1st sp.s. c 11 § 122; 1985 c 370 § 19; 1974 ex.s. c 4 § 5. Formerly RCW 28B.80.170.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.76.660 Washington scholars award and Washington scholars-alternate award. (Effective July 1, 2012.)

(1) Recipients of the Washington scholars award or the Washington scholars-alternate award under RCW 28A.600.100 through 28A.600.150 who choose to attend an independent college or university in this state, as defined in subsection (4) of this section, and recipients of the award named after June 30, 1994, who choose to attend a public college or university in the state may receive grants under this section if moneys are available. The office shall distribute grants to eligible students under this section from moneys appropriated for this purpose. The individual grants shall not exceed, on a yearly basis, the yearly, full-time, resident, undergraduate tuition and service and activities fees in effect at the state-funded research universities. Grants to recipients attending an independent institution shall be contingent upon the institution matching on at least a dollar-for-dollar basis, either with actual money or by a waiver of fees, the amount of the grant received by the student from the state. The office shall establish procedures, by rule, to disburse the awards as direct grants to the students.

(2) The office shall establish rules that provide for the annual awarding of grants, if moneys are available, to three Washington scholars per legislative district except for fiscal year 2007 when no more than two scholars per district shall be selected; and, if not used by an original recipient, to the Washington scholars-alternate from the same legislative district.

Beginning with scholars selected in the year 2000, if the recipients of grants fail to demonstrate in a timely manner that they will enroll in a Washington institution of higher education in the fall term of the academic year following the award of the grant or are deemed by the office to have withdrawn from college during the first academic year following the award, then the grant shall be considered relinquished.

[2011 RCW Supp—page 572]

The office may then award any remaining grant amounts to the Washington scholars-alternate from the same legislative district if the grants are awarded within one calendar year of the recipient being named a Washington scholars-alternate. Washington scholars-alternates named as recipients of the grant must also demonstrate in a timely manner that they will enroll in a Washington institution of higher education during the next available term, as determined by the office. The office may accept appeals and grant waivers to the enrollment requirements of this section based on exceptional mitigating circumstances of individual grant recipients.

To maintain eligibility for the grants, recipients must maintain a minimum grade point average at the college or university equivalent to 3.30. Students shall be eligible to receive a maximum of twelve quarters or eight semesters of grants for undergraduate study and may transfer among in-state public and independent colleges and universities during that period and continue to receive the grant as provided under RCW 28B.76.665. If the student's cumulative grade point average falls below 3.30 during the first three quarters or two semesters, that student may petition the office which shall have the authority to establish a probationary period until such time as the student's grade point average meets required standards.

(3) No grant shall be awarded to any student who is pursuing a degree in theology.

(4) As used in this section, "independent college or university" means a private, nonprofit educational institution, the main campus of which is permanently situated in the state, open to residents of the state, providing programs of education beyond the high school level leading at least to the baccalaureate degree, and accredited by the northwest association of schools and colleges as of June 9, 1988, and other institutions as may be developed that are approved by the office of financial management as meeting equivalent standards as those institutions accredited under this section.

(5) As used in this section, "public college or university" means an institution of higher education as defined in RCW 28B.10.016. [2011 1st sp.s. c 11 § 123; 2005 c 518 § 917; 2004 c 275 § 24; 1999 c 159 § 3; 1995 1st sp.s. c 5 § 3; 1990 c 33 § 560; 1988 c 210 § 1. Formerly RCW 28B.80.245.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Findings—Intent—1999 c 159: See note following RCW 28A.600.150.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Additional notes found at www.leg.wa.gov

28B.76.670 Washington award for vocational excellence—Grants—Definitions. (Effective July 1, 2012.) (1) Recipients of the Washington award for vocational excellence under RCW 28C.04.520 through 28C.04.550, who receive the award after June 30, 1994, may receive a grant, if funds are available. The grant shall be used to attend a post-secondary institution located in the state of Washington.

Recipients may attend an institution of higher education as defined in RCW 28B.10.016, or an independent college or university, or a licensed private vocational school. The office shall distribute grants to eligible students under this section from moneys appropriated for this purpose. The individual grants shall not exceed, on a yearly basis, the yearly, full-time, resident, undergraduate tuition and service and activities fees in effect at the state-funded research universities. In consultation with the workforce training and education coordinating board, the office shall establish procedures, by rule, to disburse the awards as direct grants to the students.

(2) To qualify for the grant, recipients shall enter the postsecondary institution within three years of high school graduation and maintain a minimum grade point average at the institution equivalent to 3.00, or, at a technical college, an above average rating. Students shall be eligible to receive a maximum of two years of grants for undergraduate study and may transfer among in-state eligible postsecondary institutions during that period and continue to receive the grant.

(3) No grant may be awarded to any student who is pursuing a degree in theology.

(4) As used in this section, "independent college or university" means a private, nonprofit educational institution, the main campus of which is permanently situated in the state, open to residents of the state, providing programs of education beyond the high school level leading at least to the baccalaureate degree, and accredited by the Northwest association of schools and colleges as of June 9, 1988, and other institutions as may be developed that are approved by the *higher education coordinating board as meeting equivalent standards as those institutions accredited under this section.

(5) As used in this section, "licensed private vocational school" means a private postsecondary institution, located in the state, licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, and offering postsecondary education in order to prepare persons for a vocation or profession, as defined in RCW 28C.10.020(7). [2011 1st sp.s. c 11 § 124; 1995 1st sp.s. c 7 § 8. Formerly RCW 28B.80.272.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.76.690 Border county higher education opportunity project—Administration. (Effective July 1, 2012.) The office shall administer Washington's participation in the border county higher education opportunity project. [2011 1st sp.s. c 11 § 125; 2003 c 159 § 3; 2002 c 130 § 4; 1999 c 320 § 3. Formerly RCW 28B.80.807.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.76.695 Western Governors University - Washington—Recognition and endorsement—Rules. (1) The *board may:

(a) Recognize and endorse online, competency-based education as an important component of Washington's higher education system;

(b) Work to eliminate unnecessary barriers to the delivery of online competency-based education by Western Governors University - Washington; and

(c) Work with Western Governors University - Washington, as appropriate, to integrate its academic programs and services into Washington higher education policy and strategy.

(2) The *board shall work with Western Governors University - Washington to create data-sharing processes to assess the institution's performance and determine the extent to which it helps the state achieve the goals of the current statewide strategic master plan for higher education.

(3) The *board shall adopt rules and policies to implement this section and that require *board consultation and approval before:

(a) Modifications of contractual terms or relationships between the state and the institution of higher education; or

(b) Changes or modifications in the nonprofit status of the institution of higher education. [2011 c 146 § 2.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Findings—Intent—2011 c 146: "The legislature finds that the key to Washington's economic prosperity over the past twenty years has been a thriving employment sector for workers who have high levels of education. The legislature finds that by 2018, sixty-seven percent of all jobs in Washington will require some postsecondary education - the fifth highest in the nation - and that between 2011 and 2018, the number of Washington jobs requiring postsecondary education will increase by two hundred fifty-nine thousand. The legislature finds that while Washington enterprises that rely on highly educated workers have been able to fill positions from within the state and by attracting workers from other states or nations, businesses located in states that fail to produce sufficient numbers of degreed workers will be at a competitive disadvantage, since these employers will incur the added expense of recruiting heavily in other states and countries to find their skilled workforce. Citizens of Washington will not have access to the jobs Washington firms are producing unless the state dramatically increases postsecondary educational opportunities for them. The legislature further finds that increasing the numbers of Washington graduates to meet the needs of the state's citizens and businesses demands innovative institutions and educational delivery systems.

The legislature intends to partner with Western Governors University, a regionally and nationally accredited nonprofit and independent university, to establish Western Governors University - Washington. Western Governors University would offer online, competency-based degrees and provide enhanced access to postsecondary education for all Washington students, including dislocated workers and placebound students. The legislature further intends that the institution be recognized as a Washington baccalaureate degree-granting institution that is self-supporting and does not receive state funding. It is the intent of the legislature that the higher education coordinating board, the state board for community and technical colleges, and the other institutions of higher education in Washington include the institution in policies and agreements regarding the efficient transfer of credits and courses between institutions." [2011 c 146 § 1.]

Chapter 28B.77 RCW

COUNCIL FOR HIGHER EDUCATION

Sections

28B.77.005 Council for higher education created—Higher education coordinating board abolished. (Effective July 1, 2012.)

28B.77.005 Council for higher education created—Higher education coordinating board abolished. (Effective July 1, 2012.) On July 1, 2012, the higher education

coordinating board is abolished and the council for higher education is created subject to the recommendations of the higher education steering committee established in section 302, chapter 11, Laws of 2011 1st sp. sess. and implementing legislation enacted by the 2012 legislature. [2011 1st sp.s. c 11 § 301.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Higher education steering committee—2011 1st sp.s. c 11: "(1) The higher education steering committee is created.

(2) Members of the steering committee include: The governor or the governor's designee, who shall chair the committee; two members from the house of representatives, with one from each of the two major caucuses, appointed by the speaker of the house of representatives; two members from the senate, with one appointed from each of the two major caucuses, appointed by the president of the senate; an equal representation from the key sectors of the higher education system in the state; and at least two members representing the public as appointed by the governor.

(3) The steering committee shall review coordination, planning, and communication for higher education in the state and establish the purpose and functions of the council for higher education. Specifically, the steering committee shall consider options for the following:

(a) Creating an effective and efficient higher education system and coordinating key sectors including through the P-20 system;

(b) Improving the coordination of institutions of higher education and sectors with specific attention to strategic planning, system design, and transfer and articulation;

(c) Improving structures and functions related to administration and regulation of the state's higher education institutions and programs, including but not limited to financial aid, the advanced college tuition payment program, federal grant administration, new degree program approval, authorization to offer degrees in the state, reporting performance data, and minimum admission standards; and

(d) The composition and mission of the council for higher education.

(4) The steering committee shall consider input from higher education stakeholders, including but not limited to the higher education coordinating board, the state board for community and technical colleges, the community and technical colleges system, private, nonprofit baccalaureate degree-granting institutions, the office of the superintendent of public instruction, the workforce training and education coordinating board, the four-year institutions of higher education, students, faculty, business and labor organizations, and members of the public.

(5) Staff support for the steering committee must be provided by the office of financial management.

(6) The steering committee shall report its findings and recommendations, including proposed legislation, to the governor and appropriate committees of the legislature by December 1, 2011.

(7) This section expires July 1, 2012." [2011 1st sp.s. c 11 § 302.]

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Chapter 28B.92 RCW

STATE STUDENT FINANCIAL AID PROGRAMS

Sections

28B.92.020	State need grant program—Findings—Intent. (<i>Effective July 1, 2012.</i>)
28B.92.030	Definitions. (<i>Effective July 1, 2012.</i>)
28B.92.040	Guidelines in performance of duties. (<i>Effective July 1, 2012.</i>)
28B.92.050	Powers and duties of office. (<i>Effective July 1, 2012.</i>)
28B.92.060	State need grant awards. (<i>Effective until July 1, 2012.</i>)
28B.92.060	State need grant awards. (<i>Effective July 1, 2012.</i>)
28B.92.084	Eligibility of opportunity internship graduates. (<i>Effective July 1, 2012.</i>)
28B.92.120	Office to determine how funds disbursed. (<i>Effective July 1, 2012.</i>)
28B.92.130	Grants, gifts, bequests, and devises of property. (<i>Effective July 1, 2012.</i>)
28B.92.140	State educational trust fund—Deposits—Expenditures. (<i>Effective July 1, 2012.</i>)
28B.92.150	Rules. (<i>Effective July 1, 2012.</i>)

[2011 RCW Supp—page 574]

28B.92.020 State need grant program—Findings—Intent. (*Effective July 1, 2012.*) (1) The legislature finds that the higher education community, has completed a review of the state need grant program. It is the intent of the legislature to endorse the proposed changes to the state need grant program, including:

(a) Reaffirmation that the primary purpose of the state need grant program is to assist low-income, needy, and disadvantaged Washington residents attending institutions of higher education;

(b) A goal that the base state need grant amount over time be increased to be equivalent to the rate of tuition charged to resident undergraduate students attending Washington state public colleges and universities;

(c) State need grant recipients be required to contribute a portion of the total cost of their education through self-help;

(d) State need grant recipients be required to document their need for dependent care assistance after taking into account other public funds provided for like purposes; and

(e) Institutional aid administrators be allowed to determine whether a student eligible for a state need grant in a given academic year may remain eligible for the ensuing year if the student's family income increases by no more than a marginal amount except for funds provided through the educational assistance grant program for students with dependents.

(2) The legislature further finds that the changes in subsection (1) of this section, should do so in a timely manner.

(3) The legislature also finds that:

(a) In most circumstances, need grant eligibility should not extend beyond five years or one hundred twenty-five percent of the published length of the program in which the student is enrolled or the credit or clock-hour equivalent; and

(b) State financial aid programs should continue to adhere to the principle that funding follows resident students to their choice of institution of higher education. [2011 1st sp.s. c 11 § 158; 2003 c 19 § 11; 1999 c 345 § 1. Formerly RCW 28B.10.801.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Finding—Intent—Short title—Captions not law—2003 c 19: See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

28B.92.030 Definitions. (*Effective July 1, 2012.*) As used in this chapter:

(1) "Disadvantaged student" means a posthigh school student who by reason of adverse cultural, educational, environmental, experiential, familial or other circumstances is unable to qualify for enrollment as a full-time student in an institution of higher education, who would otherwise qualify as a needy student, and who is attending an institution of higher education under an established program designed to qualify the student for enrollment as a full-time student.

(2) "Financial aid" means loans and/or grants to needy students enrolled or accepted for enrollment as a student at institutions of higher education.

(3) "Institution" or "institutions of higher education" means:

(a) Any public university, college, community college, or technical college operated by the state of Washington or any political subdivision thereof; or

(b) Any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level which is a member institution of an accrediting association recognized by rule of the *board for the purposes of this section: PROVIDED, That any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association, or a branch of a member institution of an accrediting association recognized by rule of the *board for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, and has an annual enrollment of at least seven hundred full-time equivalent students: PROVIDED FURTHER, That no institution of higher education shall be eligible to participate in a student financial aid program unless it agrees to and complies with program rules and regulations adopted pursuant to RCW 28B.92.150.

(4) "Needy student" means a posthigh school student of an institution of higher education who demonstrates to the *board the financial inability, either through the student's parents, family and/or personally, to meet the total cost of board, room, books, and tuition and incidental fees for any semester or quarter. "Needy student" also means an opportunity internship graduate as defined by RCW 28C.18.162 who enrolls in a postsecondary program of study as defined in RCW 28C.18.162 within one year of high school graduation.

(5) "Office" means the office of student financial assistance.

(6) "Placebound student" means a student who (a) is unable to complete a college program because of family or employment commitments, health concerns, monetary inability, or other similar factors; and (b) may be influenced by the receipt of an enhanced student financial aid award to complete a baccalaureate degree at an eligible institution. [2011 1st sp.s. c 11 § 159. Prior: 2009 c 238 § 7; 2009 c 215 § 5; 2004 c 275 § 35; 2002 c 187 § 1; 1989 c 254 § 2; 1985 c 370 § 56; 1979 ex.s. c 235 § 1; 1975 1st ex.s. c 132 § 16; 1969 ex.s. c 222 § 8. Formerly RCW 28B.10.802, 28.76.440.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—2009 c 238: See note following RCW 28C.18.160.

Findings—Intent—2009 c 215: "The legislature finds that a myriad of financial aid programs exist for students at the federal, state, local, community, and institutional levels. These programs enable thousands of students across Washington to access all sectors of higher education, from apprenticeship programs to public and private four and two-year institutions of higher education. The legislature further finds that Washington state is a national leader in the distribution of financial aid to increase college access and affordability, ranking fourth in the nation in 2007 in terms of state student grant aid funding per capita.

It is the intent of the legislature to promote and expand access to state financial aid programs by determining which programs provide the greatest value to the largest number of students, and by fully supporting those programs. Furthermore, it is the intent of the legislature to designate all existing

financial aid an opportunity pathway, with the effect of providing students with a clear understanding of available resources to pay for postsecondary education, thereby increasing access to postsecondary education and meeting the needs of local business and industry.

It is the intent of the legislature that the higher education coordinating board, the state board for community and technical colleges, the office of the superintendent of public instruction, the workforce training and education coordinating board, and institutions of higher education coordinate the development of outreach tools, such as a web-based portal for information on all opportunity pathway aid programs. The information should be communicated in a format and manner that provides an ease of understanding for students and their families and include other pertinent information on institutions of higher education, costs, and academic programs. It is also the intent of the legislature for institutions of higher education to incorporate this information in promotional materials to prospective and current students and their families." [2009 c 215 § 1.]

Effective date—2009 c 215: "This act takes effect August 1, 2009." [2009 c 215 § 17.]

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Intent—1989 c 254: "It is the intent of the legislature that nothing in this act shall prevent or discourage an individual from making an effort to repay any state financial aid awarded during his or her collegiate career." [1989 c 254 § 1.]

Loan programs for mathematics and science teachers: RCW 28B.15.760 through 28B.15.766.

Additional notes found at www.leg.wa.gov

28B.92.040 Guidelines in performance of duties. (*Effective July 1, 2012.*) The office shall be cognizant of the following guidelines in the performance of its duties:

(1) The office shall be research oriented, not only at its inception but continually through its existence.

(2) The office shall coordinate all existing programs of financial aid except those specifically dedicated to a particular institution by the donor.

(3) The office shall take the initiative and responsibility for coordinating all federal student financial aid programs to ensure that the state recognizes the maximum potential effect of these programs, and shall design state programs that complement existing federal, state, and institutional programs. The office shall ensure that state programs continue to follow the principle that state financial aid funding follows the student to the student's choice of institution of higher education.

(4) Counseling is a paramount function of the state need grant and other state student financial aid programs, and in most cases could only be properly implemented at the institutional levels; therefore, state student financial aid programs shall be concerned with the attainment of those goals which, in the judgment of the office, are the reasons for the existence of a student financial aid program, and not solely with administration of the program on an individual basis.

(5) The "package" approach of combining loans, grants and employment for student financial aid shall be the conceptual element of the state's involvement.

(6) The office shall ensure that allocations of state appropriations for financial aid are made to individuals and institutions in a timely manner and shall closely monitor expenditures to avoid under or overexpenditure of appropriated funds. [2011 1st sp.s. c 11 § 160; 2004 c 275 § 36; 1999 c 345 § 3; 1995 c 269 § 801; 1969 ex.s. c 222 § 10. Formerly RCW 28B.10.804, 28.76.450.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Additional notes found at www.leg.wa.gov

28B.92.050 Powers and duties of office. (Effective July 1, 2012.) The office shall have the following powers and duties:

(1) Conduct a full analysis of student financial aid as a means of:

(a) Fulfilling educational aspirations of students of the state of Washington, and

(b) Improving the general, social, cultural, and economic character of the state.

Such an analysis will be a continuous one and will yield current information relevant to needed improvements in the state program of student financial aid. The office will disseminate the information yielded by their analyses to all appropriate individuals and agents.

(2) Design a state program of student financial aid based on the data of the study referred to in this section. The state programs will supplement available federal and local aid programs. The state programs of student financial aid will not exceed the difference between the budgetary costs of attending an institution of higher education and the student's total resources, including family support, personal savings, employment, and federal, state, and local aid programs.

(3) Determine and establish criteria for financial need of the individual applicant based upon the consideration of that particular applicant. In making this determination the office shall consider the following:

(a) Assets and income of the student.

(b) Assets and income of the parents, or the individuals legally responsible for the care and maintenance of the student.

(c) The cost of attending the institution the student is attending or planning to attend.

(d) Any other criteria deemed relevant to the office.

(4) Set the amount of financial aid to be awarded to any individual needy or disadvantaged student in any school year.

(5) Award financial aid to needy or disadvantaged students for a school year based upon only that amount necessary to fill the financial gap between the budgetary cost of attending an institution of higher education and the family and student contribution.

(6) Review the need and eligibility of all applications on an annual basis and adjust financial aid to reflect changes in the financial need of the recipients and the cost of attending the institution of higher education. [2011 1st sp.s. c 11 § 161; 1999 c 345 § 4; 1989 c 254 § 3; 1969 ex.s. c 222 § 11. Formerly RCW 28B.10.806, 28.76.460.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Intent—1989 c 254: See note following RCW 28B.92.030.

28B.92.060 State need grant awards. (Effective until July 1, 2012.) In awarding need grants, the board shall proceed substantially as follows: PROVIDED, That nothing contained herein shall be construed to prevent the board, in the exercise of its sound discretion, from following another procedure when the best interest of the program so dictates:

(1) The board shall annually select the financial aid award recipients from among Washington residents applying for student financial aid who have been ranked according to:

(a) Financial need as determined by the amount of the family contribution; and

(b) Other considerations, such as whether the student is a former foster youth, or is a placebound student who has completed an associate of arts or associate of science degree or its equivalent.

(2) The financial need of the highest ranked students shall be met by grants depending upon the evaluation of financial need until the total allocation has been disbursed. Funds from grants which are declined, forfeited or otherwise unused shall be reawarded until disbursed, except that eligible former foster youth shall be assured receipt of a grant. The board, in consultation with four-year institutions of higher education, and the state board for community and technical colleges, shall develop award criteria and methods of disbursement based on level of need, and not solely rely on a first-come, first-served basis.

(3) A student shall be eligible to receive a state need grant for up to five years, or the credit or clock hour equivalent of five years, or up to one hundred twenty-five percent of the published length of time of the student's program. A student may not start a new associate degree program as a state need grant recipient until at least five years have elapsed since earning an associate degree as a need grant recipient, except that a student may earn two associate degrees concurrently. Qualifications for renewal will include maintaining satisfactory academic progress toward completion of an eligible program as determined by the board. Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the state educational grant fund by the institution according to the institution's own policy for issuing refunds, except as provided in RCW 28B.92.070.

(4) In computing financial need, the board shall determine a maximum student expense budget allowance, not to exceed an amount equal to the total maximum student expense budget at the public institutions plus the current average state appropriation per student for operating expense in the public institutions. Any child support payments received by students who are parents attending less than half-time shall not be used in computing financial need.

(5)(a) A student who is enrolled in three to six credit-bearing quarter credits, or the equivalent semester credits, may receive a grant for up to one academic year before beginning a program that leads to a degree or certificate.

(b) An eligible student enrolled on a less-than-full-time basis shall receive a prorated portion of his or her state need grant for any academic period in which he or she is enrolled on a less-than-full-time basis, as long as funds are available.

(c) An institution of higher education may award a state need grant to an eligible student enrolled in three to six credit-bearing quarter credits, or the semester equivalent, on a provisional basis if:

(i) The student has not previously received a state need grant from that institution;

(ii) The student completes the required free application for federal student aid;

(iii) The institution has reviewed the student's financial condition, and the financial condition of the student's family if the student is a dependent student, and has determined that the student is likely eligible for a state need grant; and

(iv) The student has signed a document attesting to the fact that the financial information provided on the free application for federal student aid and any additional financial information provided directly to the institution is accurate and complete, and that the student agrees to repay the institution for the grant amount if the student submitted false or incomplete information.

(6) As used in this section, "former foster youth" means a person who is at least eighteen years of age, but not more than twenty-four years of age, who was a dependent of the department of social and health services at the time he or she attained the age of eighteen. [2011 1st sp.s. c 10 § 9; 2009 c 215 § 4; 2007 c 404 § 2; 2005 c 93 § 3; 2004 c 275 § 37; 1999 c 345 § 5; 1991 c 164 § 4; 1989 c 254 § 4; 1969 ex.s. c 222 § 12. Formerly RCW 28B.10.808, 28.76.470.]

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

Findings—Intent—Effective date—2009 c 215: See notes following RCW 28B.92.030.

Findings—Intent—2005 c 93: See note following RCW 74.13.570.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Intent—1989 c 254: See note following RCW 28B.92.030.

28B.92.060 State need grant awards. (Effective July 1, 2012.) In awarding need grants, the office shall proceed substantially as follows: PROVIDED, That nothing contained herein shall be construed to prevent the office, in the exercise of its sound discretion, from following another procedure when the best interest of the program so dictates:

(1) The office shall annually select the financial aid award recipients from among Washington residents applying for student financial aid who have been ranked according to:

(a) Financial need as determined by the amount of the family contribution; and

(b) Other considerations, such as whether the student is a former foster youth, or is a placebound student who has completed an associate of arts or associate of science degree or its equivalent.

(2) The financial need of the highest ranked students shall be met by grants depending upon the evaluation of financial need until the total allocation has been disbursed. Funds from grants which are declined, forfeited or otherwise unused shall be reawarded until disbursed, except that eligible former foster youth shall be assured receipt of a grant. The board, in consultation with four-year institutions of higher education, and the state board for community and technical colleges, shall develop award criteria and methods of disbursement based on level of need, and not solely rely on a first-come, first-served basis.

(3) A student shall be eligible to receive a state need grant for up to five years, or the credit or clock hour equivalent of five years, or up to one hundred twenty-five percent of the published length of time of the student's program. A student may not start a new associate degree program as a state need grant recipient until at least five years have elapsed since earning an associate degree as a need grant recipient,

except that a student may earn two associate degrees concurrently. Qualifications for renewal will include maintaining satisfactory academic progress toward completion of an eligible program as determined by the office. Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the state educational grant fund by the institution according to the institution's own policy for issuing refunds, except as provided in RCW 28B.92.070.

(4) In computing financial need, the office shall determine a maximum student expense budget allowance, not to exceed an amount equal to the total maximum student expense budget at the public institutions plus the current average state appropriation per student for operating expense in the public institutions. Any child support payments received by students who are parents attending less than half-time shall not be used in computing financial need.

(5)(a) A student who is enrolled in three to six credit-bearing quarter credits, or the equivalent semester credits, may receive a grant for up to one academic year before beginning a program that leads to a degree or certificate.

(b) An eligible student enrolled on a less-than-full-time basis shall receive a prorated portion of his or her state need grant for any academic period in which he or she is enrolled on a less-than-full-time basis, as long as funds are available.

(c) An institution of higher education may award a state need grant to an eligible student enrolled in three to six credit-bearing quarter credits, or the semester equivalent, on a provisional basis if:

(i) The student has not previously received a state need grant from that institution;

(ii) The student completes the required free application for federal student aid;

(iii) The institution has reviewed the student's financial condition, and the financial condition of the student's family if the student is a dependent student, and has determined that the student is likely eligible for a state need grant; and

(iv) The student has signed a document attesting to the fact that the financial information provided on the free application for federal student aid and any additional financial information provided directly to the institution is accurate and complete, and that the student agrees to repay the institution for the grant amount if the student submitted false or incomplete information.

(6) As used in this section, "former foster youth" means a person who is at least eighteen years of age, but not more than twenty-four years of age, who was a dependent of the department of social and health services at the time he or she attained the age of eighteen. [2011 1st sp.s. c 11 § 162; 2011 1st sp.s. c 10 § 9; 2009 c 215 § 4; 2007 c 404 § 2; 2005 c 93 § 3; 2004 c 275 § 37; 1999 c 345 § 5; 1991 c 164 § 4; 1989 c 254 § 4; 1969 ex.s. c 222 § 12. Formerly RCW 28B.10.808, 28.76.470.]

Reviser's note: This section was amended by 2011 1st sp.s. c 10 § 9 and by 2011 1st sp.s. c 11 § 162, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—Short title—2011 1st sp.s. c 10: See notes following RCW 28B.15.031.

Findings—Intent—Effective date—2009 c 215: See notes following RCW 28B.92.030.

Findings—Intent—2005 c 93: See note following RCW 74.13.570.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Intent—1989 c 254: See note following RCW 28B.92.030.

28B.92.084 Eligibility of opportunity internship graduates. (Effective July 1, 2012.) (1) The office shall work with institutions of higher education to assure that the institutions are aware of the eligibility of opportunity internship graduates for an award under this chapter.

(2) If an opportunity internship graduate enrolls within one year of high school graduation in a postsecondary program of study in an institution of higher education, including in an apprenticeship program with related and supplemental instruction provided through an institution of higher education, the graduate is eligible to receive a state need grant for up to one year. The graduate shall not be required to be enrolled on at least a half-time basis. The related and supplemental instruction provided to a graduate through an apprenticeship program shall not be required to lead to a degree or certificate.

(3) Except for the eligibility criteria for an opportunity internship graduate that are provided under this section, other rules pertaining to award of a state need grant apply.

(4) Nothing in this section precludes an opportunity internship graduate from being eligible to receive additional state need grants after the one-year grant provided in this section if the graduate meets other criteria as a needy or disadvantaged student. [2011 1st sp.s. c 11 § 163; 2009 c 238 § 8.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—2009 c 238: See note following RCW 28C.18.160.

28B.92.120 Office to determine how funds disbursed. (Effective July 1, 2012.) Funds appropriated for student financial assistance to be granted pursuant to this chapter shall be disbursed as determined by the office. [2011 1st sp.s. c 11 § 164; 2004 c 275 § 41; 1969 ex.s. c 222 § 17. Formerly RCW 28B.10.818, 28.76.510.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.92.130 Grants, gifts, bequests, and devises of property. (Effective July 1, 2012.) The office shall be authorized to accept grants, gifts, bequests, and devises of real and personal property from any source for the purpose of granting financial aid in addition to that funded by the state. [2011 1st sp.s. c 11 § 165; 2004 c 275 § 42; 1969 ex.s. c 222 § 18. Formerly RCW 28B.10.820, 28.76.520.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

[2011 RCW Supp—page 578]

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.92.140 State educational trust fund—Deposits—Expenditures. (Effective July 1, 2012.) The state educational trust fund is hereby established in the state treasury. The primary purpose of the trust is to pledge statewide available college student assistance to needy or disadvantaged students, especially middle and high school youth, considered at-risk of dropping out of secondary education who participate in approved early awareness and outreach programs and who enter any accredited Washington institution of postsecondary education within two years of high school graduation.

The office shall deposit refunds and recoveries of student financial aid funds expended in prior fiscal periods in such account. The office may also deposit moneys that have been contributed from other state, federal, or private sources.

Expenditures from the fund shall be for financial aid to needy or disadvantaged students. The office may annually expend such sums from the fund as may be necessary to fulfill the purposes of this section, including not more than three percent for the costs to administer aid programs supported by the fund. All earnings of investments of balances in the state educational trust fund shall be credited to the trust fund. Expenditures from the fund shall not be subject to appropriation but are subject to allotment procedures under chapter 43.88 RCW. [2011 1st sp.s. c 11 § 166; 1997 c 269 § 1; 1996 c 107 § 1; 1991 sp.s. c 13 § 12; 1985 c 57 § 10; 1981 c 55 § 1. Formerly RCW 28B.10.821.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.92.150 Rules. (Effective July 1, 2012.) The office shall adopt rules as may be necessary or appropriate for effecting the provisions of this chapter, in accordance with the provisions of chapter 34.05 RCW, the administrative procedure act. [2011 1st sp.s. c 11 § 167; 2004 c 275 § 43; 1999 c 345 § 7; 1973 c 62 § 4; 1969 ex.s. c 222 § 19. Formerly RCW 28B.10.822, 28.76.530.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

Additional notes found at www.leg.wa.gov

Chapter 28B.95 RCW

ADVANCED COLLEGE TUITION PAYMENT PROGRAM

Sections

- 28B.95.020 Definitions. *(Effective July 1, 2012.)*
- 28B.95.025 Offices and personnel. *(Effective July 1, 2012.)*
- 28B.95.030 Administration of program—Tuition units—Promotion of program—Authority of governing body. *(Effective until July 1, 2012.)*
- 28B.95.030 Administration of program—Tuition units—Promotion of program—Authority of governing body. *(Effective July 1, 2012.)*
- 28B.95.040 Purchase of tuition units by organizations—Rules—Scholarship fund. *(Effective July 1, 2012.)*

- 28B.95.060 Washington advanced college tuition payment program account. (*Effective July 1, 2012.*)
- 28B.95.080 Washington advanced college tuition payment program account—Actuarial soundness—Adjustment of tuition credit purchases.
- 28B.95.150 College savings program.
- 28B.95.160 GET ready for math and science scholarship program—Tuition units—Ownership and redemption. (*Effective July 1, 2012.*)
- 28B.95.170 Legislative advisory committee.

28B.95.020 Definitions. (*Effective July 1, 2012.*) The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Academic year" means the regular nine-month, three-quarter, or two-semester period annually occurring between August 1st and July 31st.

(2) "Account" means the Washington advanced college tuition payment program account established for the deposit of all money received by the *board from eligible purchasers and interest earnings on investments of funds in the account, as well as for all expenditures on behalf of eligible beneficiaries for the redemption of tuition units and for the development of any authorized college savings program pursuant to RCW 28B.95.150.

(3) "Committee on advanced tuition payment" or "committee" means a committee of the following members: The state treasurer, the director of the office of financial management, the director of the office, or their designees, and two members to be appointed by the governor, one representing program participants and one private business representative with marketing, public relations, or financial expertise.

(4) "Contractual obligation" means a legally binding contract of the state with the purchaser and the beneficiary establishing that purchases of tuition units will be worth the same number of tuition units at the time of redemption as they were worth at the time of the purchase.

(5) "Eligible beneficiary" means the person for whom the tuition unit will be redeemed for attendance at an institution of higher education. The beneficiary is that person named by the purchaser at the time that a tuition unit contract is accepted by the governing body. Qualified organizations, as allowed under section 529 of the federal internal revenue code, purchasing tuition unit contracts as future scholarships need not designate a beneficiary at the time of purchase.

(6) "Eligible purchaser" means an individual or organization that has entered into a tuition unit contract with the governing body for the purchase of tuition units for an eligible beneficiary. The state of Washington may be an eligible purchaser for purposes of purchasing tuition units to be held for granting Washington college bound scholarships.

(7) "Full-time tuition charges" means resident tuition charges at a state institution of higher education for enrollments between ten credits and eighteen credit hours per academic term.

(8) "Governing body" means the committee empowered by the legislature to administer the Washington advanced college tuition payment program.

(9) "Institution of higher education" means an institution that offers education beyond the secondary level and is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(10) "Investment board" means the state investment board as defined in chapter 43.33A RCW.

(11) "Office" means the office of student financial assistance as defined in chapter 28B.76 RCW.

(12) "State institution of higher education" means institutions of higher education as defined in RCW 28B.10.016.

(13) "Tuition and fees" means undergraduate tuition and services and activities fees as defined in RCW 28B.15.020 and 28B.15.041 rounded to the nearest whole dollar. For purposes of this chapter, services and activities fees do not include fees charged for the payment of bonds heretofore or hereafter issued for, or other indebtedness incurred to pay, all or part of the cost of acquiring, constructing, or installing any lands, buildings, or facilities.

(14) "Tuition unit contract" means a contract between an eligible purchaser and the governing body, or a successor agency appointed for administration of this chapter, for the purchase of tuition units for a specified beneficiary that may be redeemed at a later date for an equal number of tuition units.

(15) "Unit purchase price" means the minimum cost to purchase one tuition unit for an eligible beneficiary. Generally, the minimum purchase price is one percent of the undergraduate tuition and fees for the current year, rounded to the nearest whole dollar, adjusted for the costs of administration and adjusted to ensure the actuarial soundness of the account. The analysis for price setting shall also include, but not be limited to consideration of past and projected patterns of tuition increases, program liability, past and projected investment returns, and the need for a prudent stabilization reserve. [2011 1st sp.s. c 11 § 168; 2007 c 405 § 8; 2005 c 272 § 1; 2004 c 275 § 59; 2001 c 184 § 1; 2000 c 14 § 1; 1997 c 289 § 2.]

Reviser's note: *(1) The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.95.025 Offices and personnel. (*Effective July 1, 2012.*) The office shall maintain appropriate offices and employ and fix compensation of such personnel as may be necessary to perform the advanced college tuition payment program duties. The office shall consult with the governing body on the selection, compensation, and other issues relating to the employment of the program director. The positions are exempt from classified service under chapter 41.06 RCW. The employees shall be employees of the office. [2011 1st sp.s. c 11 § 169; 2000 c 14 § 2; 1998 c 69 § 2.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.95.030 Administration of program—Tuition units—Promotion of program—Authority of governing body. (Effective until July 1, 2012.) (1) The Washington advanced college tuition payment program shall be administered by the committee on advanced tuition payment which shall be chaired by the executive director of the board. The committee shall be supported by staff of the board.

(2)(a) The Washington advanced college tuition payment program shall consist of the sale of tuition units, which may be redeemed by the beneficiary at a future date for an equal number of tuition units regardless of any increase in the price of tuition, that may have occurred in the interval.

(b) Each purchase shall be worth a specific number of or fraction of tuition units at each state institution of higher education as determined by the governing body.

(c) The number of tuition units necessary to pay for a full year's, full-time undergraduate tuition and fee charges at a state institution of higher education shall be set by the governing body at the time a purchaser enters into a tuition unit contract.

(d) The governing body may limit the number of tuition units purchased by any one purchaser or on behalf of any one beneficiary, however, no limit may be imposed that is less than that necessary to achieve four years of full-time, undergraduate tuition charges at a state institution of higher education. The governing body also may, at its discretion, limit the number of participants, if needed, to ensure the actuarial soundness and integrity of the program.

(e) While the Washington advanced college tuition payment program is designed to help all citizens of the state of Washington, the governing body may determine residency requirements for eligible purchasers and eligible beneficiaries to ensure the actuarial soundness and integrity of the program.

(3)(a) No tuition unit may be redeemed until two years after the purchase of the unit. Units may be redeemed for enrollment at any institution of higher education that is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(b) Units redeemed at a nonstate institution of higher education or for graduate enrollment shall be redeemed at the rate for state public institutions in effect at the time of redemption.

(4) The governing body shall determine the conditions under which the tuition benefit may be transferred to another family member. In permitting such transfers, the governing body may not allow the tuition benefit to be bought, sold, bartered, or otherwise exchanged for goods and services by either the beneficiary or the purchaser.

(5) The governing body shall administer the Washington advanced college tuition payment program in a manner reasonably designed to be actuarially sound, such that the assets of the trust will be sufficient to defray the obligations of the trust including the costs of administration. The governing body may, at its discretion, discount the minimum purchase price for certain kinds of purchases such as those from families with young children, as long as the actuarial soundness of the account is not jeopardized.

(6) The governing body shall annually determine current value of a tuition unit.

(7) The governing body shall promote, advertise, and publicize the Washington advanced college tuition payment program.

(8) In addition to any other powers conferred by this chapter, the governing body may:

(a) Impose reasonable limits on the number of tuition units or units that may be used in any one year;

(b) Determine and set any time limits, if necessary, for the use of benefits under this chapter;

(c) Impose and collect administrative fees and charges in connection with any transaction under this chapter;

(d) Appoint and use advisory committees and the state actuary as needed to provide program direction and guidance;

(e) Formulate and adopt all other policies and rules necessary for the efficient administration of the program;

(f) Consider the addition of an advanced payment program for room and board contracts and also consider a college savings program;

(g) Purchase insurance from insurers licensed to do business in the state, to provide for coverage against any loss in connection with the account's property, assets, or activities or to further insure the value of the tuition units;

(h) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of its powers and duties under this chapter;

(i) Contract for the provision for all or part of the services necessary for the management and operation of the program with other state or nonstate entities authorized to do business in the state;

(j) Contract for other services or for goods needed by the governing body in the conduct of its business under this chapter;

(k) Contract with financial consultants, actuaries, auditors, and other consultants as necessary to carry out its responsibilities under this chapter;

(l) Solicit and accept cash donations and grants from any person, governmental agency, private business, or organization; and

(m) Perform all acts necessary and proper to carry out the duties and responsibilities of this program under this chapter. [2011 1st sp.s. c 12 § 2; 2005 c 272 § 2; 2000 c 14 § 3; 1997 c 289 § 3.]

28B.95.030 Administration of program—Tuition units—Promotion of program—Authority of governing body. (Effective July 1, 2012.) (1) The Washington advanced college tuition payment program shall be administered by the committee on advanced tuition payment which shall be chaired by the director of the office. The committee shall be supported by staff of the office.

(2)(a) The Washington advanced college tuition payment program shall consist of the sale of tuition units, which may be redeemed by the beneficiary at a future date for an equal number of tuition units regardless of any increase in the price of tuition, that may have occurred in the interval.

(b) Each purchase shall be worth a specific number of or fraction of tuition units at each state institution of higher education as determined by the governing body.

(c) The number of tuition units necessary to pay for a full year's, full-time undergraduate tuition and fee charges at a state institution of higher education shall be set by the gov-

erning body at the time a purchaser enters into a tuition unit contract.

(d) The governing body may limit the number of tuition units purchased by any one purchaser or on behalf of any one beneficiary, however, no limit may be imposed that is less than that necessary to achieve four years of full-time, undergraduate tuition charges at a state institution of higher education. The governing body also may, at its discretion, limit the number of participants, if needed, to ensure the actuarial soundness and integrity of the program.

(e) While the Washington advanced college tuition payment program is designed to help all citizens of the state of Washington, the governing body may determine residency requirements for eligible purchasers and eligible beneficiaries to ensure the actuarial soundness and integrity of the program.

(3)(a) No tuition unit may be redeemed until two years after the purchase of the unit. Units may be redeemed for enrollment at any institution of higher education that is recognized by the internal revenue service under chapter 529 of the internal revenue code.

(b) Units redeemed at a nonstate institution of higher education or for graduate enrollment shall be redeemed at the rate for state public institutions in effect at the time of redemption.

(4) The governing body shall determine the conditions under which the tuition benefit may be transferred to another family member. In permitting such transfers, the governing body may not allow the tuition benefit to be bought, sold, bartered, or otherwise exchanged for goods and services by either the beneficiary or the purchaser.

(5) The governing body shall administer the Washington advanced college tuition payment program in a manner reasonably designed to be actuarially sound, such that the assets of the trust will be sufficient to defray the obligations of the trust including the costs of administration. The governing body may, at its discretion, discount the minimum purchase price for certain kinds of purchases such as those from families with young children, as long as the actuarial soundness of the account is not jeopardized.

(6) The governing body shall annually determine current value of a tuition unit.

(7) The governing body shall promote, advertise, and publicize the Washington advanced college tuition payment program.

(8) In addition to any other powers conferred by this chapter, the governing body may:

(a) Impose reasonable limits on the number of tuition units or units that may be used in any one year;

(b) Determine and set any time limits, if necessary, for the use of benefits under this chapter;

(c) Impose and collect administrative fees and charges in connection with any transaction under this chapter;

(d) Appoint and use advisory committees and the state actuary as needed to provide program direction and guidance;

(e) Formulate and adopt all other policies and rules necessary for the efficient administration of the program;

(f) Consider the addition of an advanced payment program for room and board contracts and also consider a college savings program;

(g) Purchase insurance from insurers licensed to do business in the state, to provide for coverage against any loss in connection with the account's property, assets, or activities or to further insure the value of the tuition units;

(h) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of its powers and duties under this chapter;

(i) Contract for the provision for all or part of the services necessary for the management and operation of the program with other state or nonstate entities authorized to do business in the state;

(j) Contract for other services or for goods needed by the governing body in the conduct of its business under this chapter;

(k) Contract with financial consultants, actuaries, auditors, and other consultants as necessary to carry out its responsibilities under this chapter;

(l) Solicit and accept cash donations and grants from any person, governmental agency, private business, or organization; and

(m) Perform all acts necessary and proper to carry out the duties and responsibilities of this program under this chapter. [2011 1st sp.s. c 12 § 2; 2011 1st sp.s. c 11 § 170; 2005 c 272 § 2; 2000 c 14 § 3; 1997 c 289 § 3.]

Reviser's note: This section was amended by 2011 1st sp.s. c 11 § 170 and by 2011 1st sp.s. c 12 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.95.040 Purchase of tuition units by organizations—Rules—Scholarship fund. (Effective July 1, 2012.)

The governing body may, at its discretion, allow an organization to purchase tuition units for future use as scholarships. Such organizations electing to purchase tuition units for this purpose must enter into a contract with the governing body which, at a minimum, ensures that the scholarship shall be freely given by the purchaser to a scholarship recipient. For such purchases, the purchaser need not name a beneficiary until four months before the date when the tuition units are first expected to be used.

The governing body shall formulate and adopt such rules as are necessary to determine which organizations may qualify to purchase tuition units for scholarships under this section. The governing body also may consider additional rules for the use of tuition units if purchased as scholarships.

The governing body may establish a scholarship fund with moneys from the Washington advanced college tuition payment program account. A scholarship fund established under this authority shall be administered by the office and shall be provided to students who demonstrate financial need. Financial need is not a criterion that any other organization need consider when using tuition units as scholarships. The office also may establish its own corporate-sponsored scholarship fund under this chapter. [2011 1st sp.s. c 11 § 171; 1997 c 289 § 4.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.95.060 Washington advanced college tuition payment program account. (*Effective July 1, 2012.*) (1) The Washington advanced college tuition payment program account is created in the custody of the state treasurer. The account shall be a discrete nontreasury account retaining its interest earnings in accordance with RCW 43.79A.040.

(2)(a) Except as provided in (b) of this subsection, the governing body shall deposit in the account all money received for the program. The account shall be self-sustaining and consist of payments received from purchasers of tuition units and funds received from other sources, public or private. With the exception of investment and operating costs associated with the investment of money by the investment board paid under RCW 43.33A.160 and 43.84.160, the account shall be credited with all investment income earned by the account. Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. Money used for program administration is subject to the allotment of all expenditures. However, an appropriation is not required for such expenditures. Program administration shall include, but not be limited to: The salaries and expenses of the program personnel including lease payments, travel, and goods and services necessary for program operation; contracts for program promotion and advertisement, audits, and account management; and other general costs of conducting the business of the program.

(b) All money received by the program from the office for the GET ready for math and science scholarship program shall be deposited in the GET ready for math and science scholarship account created in RCW 28B.105.110.

(3) The assets of the account may be spent without appropriation for the purpose of making payments to institutions of higher education on behalf of the qualified beneficiaries, making refunds, transfers, or direct payments upon the termination of the Washington advanced college tuition payment program. Disbursements from the account shall be made only on the authorization of the governing body.

(4) With regard to the assets of the account, the state acts in a fiduciary, not ownership, capacity. Therefore the assets of the program are not considered state money, common cash, or revenue to the state. [2011 1st sp.s. c 11 § 172; 2007 c 214 § 13; 2000 c 14 § 5; 1998 c 69 § 4; 1997 c 289 § 6.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.95.080 Washington advanced college tuition payment program account—Actuarial soundness—Adjustment of tuition credit purchases. The governing body shall annually evaluate, and cause to be evaluated by the state actuary, the soundness of the account and determine the additional assets needed, if any, to defray the obligations of the account. The governing body may, at its discretion, consult with a nationally recognized actuary for periodic assessments of the account.

If funds are determined by the governing body, based on actuarial analysis to be insufficient to ensure the actuarial soundness of the account, the governing body shall adjust the price of subsequent tuition credit purchases to ensure its soundness.

If there are insufficient numbers of new purchases to ensure the actuarial soundness of the account, the governing body shall request such funds from the legislature as are required to ensure the integrity of the program. Funds may be appropriated directly to the account or appropriated under the condition that they be repaid at a later date. The repayment shall be made at such time that the account is again determined to be actuarially sound. [2011 1st sp.s. c 12 § 3; 1997 c 289 § 8.]

28B.95.150 College savings program. (1) The committee may establish a college savings program. If such a program is established, the college savings program shall be established, in such form as may be determined by the committee, to be a qualified state tuition program as defined by the internal revenue service under section 529 of the internal revenue code, and shall be administered in a manner consistent with the Washington advanced college tuition payment program. The committee, in planning and devising the program, shall consult with the state investment board, the state treasurer, the state actuary, the legislative fiscal and higher education committees, and the institutions of higher education. The governing body may, at its discretion, consult with a qualified actuarial consulting firm with appropriate expertise to evaluate such plans for periodic assessments of the program.

(2) Up to two hundred thousand dollars of administrative fees collected from guaranteed education tuition program participants may be applied as a loan to fund the development of a college savings program. This loan must be repaid with interest before the conclusion of the biennium in which the committee draws funds for this purpose from the advanced college tuition payment program account.

(3) If such a college savings program is established, the college savings program account is created in the custody of the state treasurer for the purpose of administering the college savings program. If created, the account shall be a discrete nontreasury account in the custody of the state treasurer. Interest earnings shall be retained in accordance with RCW 43.79A.040. Disbursements from the account, except for program administration, are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. Money used for program administration is subject to the allotment provisions, but without appropriation.

(4) The committee, after consultation with the state investment board, shall determine the investment policies for the college savings program. Program contributions may be invested by the state investment board or the committee may contract with an investment company licensed to conduct business in this state to do the investing. The committee shall keep or cause to be kept full and adequate accounts and records of the assets of each individual participant in the college savings program.

(5) Neither the state nor any eligible educational institution may be considered or held to be an insurer of the funds or assets of the individual participant accounts in the college savings program created under this section nor may any such entity be held liable for any shortage of funds in the event that balances in the individual participant accounts are insufficient to meet the educational expenses of the institution cho-

sen by the student for which the individual participant account was intended.

(6) The committee shall adopt rules to implement this section. Such rules shall include but not be limited to administration, investment management, promotion, and marketing; compliance with internal revenue service standards; application procedures and fees; start-up costs; phasing in the savings program and withdrawals therefrom; deterrents to early withdrawals and provisions for hardship withdrawals; and reenrollment in the savings program after withdrawal.

(7) The committee may, at its discretion, determine to cease operation of the college savings program if it determines the continuation is not in the best interest of the state. The committee shall adopt rules to implement this section addressing the orderly distribution of assets. [2011 1st sp.s. c 12 § 4; 2001 c 184 § 2.]

28B.95.160 GET ready for math and science scholarship program—Tuition units—Ownership and redemption. (*Effective July 1, 2012.*) Ownership of tuition units purchased by the office for the GET ready for math and science scholarship program under RCW 28B.105.070 shall be in the name of the state of Washington and may be redeemed by the state of Washington on behalf of recipients of GET ready for math and science scholarship program scholarships for tuition and fees. [2011 1st sp.s. c 11 § 173; 2007 c 214 § 12.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.95.170 Legislative advisory committee. (1)(a) A legislative advisory committee to the committee on advanced tuition payment is established. The advisory committee shall consist of the following members:

(i) Two members from each of the two largest caucuses of the house of representatives appointed by the speaker of the house of representatives. At least one member from each caucus shall be a member of the house of representatives ways and means committee and at least one member from each caucus shall be a member of the house of representatives higher education committee; and

(ii) Two members from each of the two largest caucuses of the senate appointed by the president of the senate. At least one member from each caucus shall be a member of the senate ways and means committee and at least one member from each caucus shall be a member of the senate higher education and workforce development committee.

(b) All members must be appointed by June 30, 2011, and must serve a term of no less than two years.

(c) Vacancies on the advisory committee shall be filled by appointment by either the president of the senate or the speaker of the house of representatives. All such vacancies shall be filled from the same political party and from the same house as the member whose seat was vacated.

(d) The members of the advisory committee shall serve without additional compensation, but shall be reimbursed in accordance with RCW 44.04.120 while attending meetings of the advisory committee and of the committee on advanced tuition payment.

(e) The advisory committee shall appoint its own chair and vice chair and shall meet at least once annually.

(2) The advisory committee shall provide advice to the committee on advanced tuition payment and the state actuary regarding the administration of the program including, but not limited to, pricing guidelines, the tuition unit price, and the unit payout value.

(3) Staff support for the advisory committee must be jointly provided by the senate committee services and the house of representatives office of program research. [2011 1st sp.s. c 12 § 6.]

Effective date—2011 1st sp.s. c 12 §§ 1 and 6: "Sections *1 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 6, 2011]." [2011 1st sp.s. c 12 § 8.]

***Reviser's note:** Section 1 of this act was vetoed.

Chapter 28B.97 RCW

WASHINGTON HIGHER EDUCATION LOAN PROGRAM

Sections

28B.97.010 Washington higher education loan program. (*Effective July 1, 2012.*)

28B.97.020 Definitions. (*Effective July 1, 2012.*)

28B.97.010 Washington higher education loan program. (*Effective July 1, 2012.*) (1) The Washington higher education loan program is created. The program is created to assist students in need of additional low-cost student loans and related loan benefits.

(2) The program shall be administered by the office. In administering the program, the office must:

(a) Periodically assess the needs and target the benefits to selected students;

(b) Devise a program to address the following issues related to loans:

(i) Issuance of low-interest educational loans;

(ii) Determining loan repayment obligations and options;

(iii) Borrowing educational loans at low interest rates;

(iv) Developing conditional loans that can be forgiven in exchange for service; and

(v) Creating an emergency loan fund to help students until other state and federal long-term financing can be secured;

(c) Accept public and private contributions;

(d) Publicize the program; and

(e) Work with public and private colleges and universities, the state board for community and technical colleges, the workforce training and education coordinating board, and with students, to conduct periodic assessment of program needs. The office may also consult with other groups and individuals as needed. [2011 1st sp.s. c 11 § 174; 2009 c 215 § 13.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—Effective date—2009 c 215: See notes following RCW 28B.92.030.

28B.97.020 Definitions. (*Effective July 1, 2012.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Institution of higher education" means a college or university in the state of Washington that is accredited by an accrediting association recognized as such by rule of the *board.

(2) "Office" means the office of student financial assistance.

(3) "Program" means the Washington higher education loan program.

(4) "Resident student" has the definition in RCW 28B.15.012(2) (a) through (d). [2011 1st sp.s. c 11 § 175; 2009 c 215 § 14.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—Effective date—2009 c 215: See notes following RCW 28B.92.030.

Chapter 28B.102 RCW FUTURE TEACHERS CONDITIONAL SCHOLARSHIP AND LOAN REPAYMENT PROGRAM

Sections

28B.102.020	Definitions. (<i>Effective July 1, 2012.</i>)
28B.102.030	Program created—Powers and duties of office. (<i>Effective July 1, 2012.</i>)
28B.102.040	Selection of participants—Processes—Criteria. (<i>Effective July 1, 2012.</i>)
28B.102.050	Award of conditional scholarships and loan repayments—Amount—Duration. (<i>Effective July 1, 2012.</i>)
28B.102.055	Loan repayment agreements—Rules. (<i>Effective July 1, 2012.</i>)
28B.102.060	Repayment obligation. (<i>Effective until July 1, 2012.</i>)
28B.102.060	Repayment obligation. (<i>Effective July 1, 2012.</i>)
28B.102.080	Future teachers conditional scholarship account. (<i>Effective July 1, 2012.</i>)

28B.102.020 Definitions. (*Effective July 1, 2012.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Approved education program" means an education program in the state of Washington for knowledge and skills generally learned in preschool through twelfth grade. Approved education programs may include but are not limited to:

(a) K-12 schools under Title 28A RCW; or

(b) Other K-12 educational sites in the state of Washington as designated by the *board.

(2) "Conditional scholarship" means a loan that is forgiven in whole or in part if the recipient renders service as a teacher in an approved education program in this state.

(3) "Eligible student" means a student who is registered for at least six credit hours or the equivalent, demonstrates high academic achievement, is a resident student as defined by RCW 28B.15.012 and 28B.15.013, and has a declared intention to complete an approved preparation program leading to initial teacher certification or required for earning an additional endorsement, and commits to teaching service in the state of Washington.

[2011 RCW Supp—page 584]

(4) "Equalization fee" means the additional amount added to the principal of a loan under this chapter to equate the debt to that which the student would have incurred if the loan had been received through the federal subsidized Stafford student loan program.

(5) "Forgiven" or "to forgive" or "forgiveness" means to render service as a teacher in an approved education program in the state of Washington in lieu of monetary repayment.

(6) "Institution of higher education" or "institution" means a college or university in the state of Washington that is accredited by an accrediting association recognized as such by rule of the council for higher education.

(7) "Loan repayment" means a federal student loan that is repaid in whole or in part if the recipient renders service as a teacher in an approved education program in Washington state.

(8) "Office" means the office of student financial assistance.

(9) "Participant" means an eligible student who has received a conditional scholarship or loan repayment under this chapter.

(10) "Public school" means an elementary school, a middle school, junior high school, or high school within the public school system referred to in Article IX of the state Constitution.

(11) "Satisfied" means paid-in-full.

(12) "Teacher shortage area" means a shortage of elementary or secondary school teachers in a specific subject area, discipline, classification, or geographic area as defined by the office of the superintendent of public instruction. [2011 1st sp.s. c 11 § 176; 2004 c 58 § 2; 1996 c 53 § 1; 1993 sp.s. c 18 § 36; 1987 c 437 § 2.]

Reviser's note: *(1) The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.102.030 Program created—Powers and duties of office. (*Effective July 1, 2012.*) The future teachers conditional scholarship and loan repayment program is established. The program shall be administered by the office. In administering the program, the *board shall have the following powers and duties:

(1) Select students to receive conditional scholarships or loan repayments;

(2) Adopt necessary rules and guidelines;

(3) Publicize the program;

(4) Collect and manage repayments from students who do not meet their teaching obligations under this chapter; and

(5) Solicit and accept grants and donations from public and private sources for the program. [2011 1st sp.s. c 11 § 177; 2004 c 58 § 3; 1987 c 437 § 3.]

Reviser's note: *(1) The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

(2) The office of student financial assistance replaced the higher educa-

tion coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.102.040 Selection of participants—Processes—Criteria. (Effective July 1, 2012.) (1) The office may select participants based on an application process conducted by the office or the office may utilize selection processes for similar students in cooperation with the professional educator standards board or the office of the superintendent of public instruction.

(2) If the office selects participants for the program, it shall establish a selection committee for screening and selecting recipients of the conditional scholarships. The criteria shall emphasize factors demonstrating excellence including but not limited to superior scholastic achievement, leadership ability, community contributions, bilingual ability, willingness to commit to providing teaching service in shortage areas, and an ability to act as a role model for students. Priority will be given to individuals seeking certification or an additional endorsement in math, science, technology education, agricultural education, business and marketing education, family and consumer science education, or special education. [2011 1st sp.s. c 11 § 178; 2008 c 170 § 306; 2005 c 518 § 918. Prior: 2004 c 276 § 905; 2004 c 275 § 68; 2004 c 58 § 4; 1987 c 437 § 4.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—Part headings not law—2008 c 170: See RCW 28A.700.005 and 28A.700.901.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.102.050 Award of conditional scholarships and loan repayments—Amount—Duration. (Effective July 1, 2012.) The office may award conditional scholarships or provide loan repayments to eligible participants from the funds appropriated to the office for this purpose, or from any private donations, or any other funds given to the office for this program. The amount of the conditional scholarship or loan repayment awarded an individual shall not exceed the amount of tuition and fees at the institution of higher education attended by the participant or resident undergraduate tuition and fees at the University of Washington per academic year for a full-time student, whichever is lower. Participants are eligible to receive conditional scholarships or loan repayments for a maximum of five years. [2011 1st sp.s. c 11 § 179; 2004 c 58 § 6; 1987 c 437 § 5.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.102.055 Loan repayment agreements—Rules. (Effective July 1, 2012.) (1) Upon documentation of federal

student loan indebtedness, the office may enter into agreements with participants to repay all or part of a federal student loan in exchange for teaching service in an approved educational program. The ratio of loan repayment to years of teaching service for the loan repayment program shall be the same as established for the conditional scholarship program.

(2) The agreement shall specify the period of time it is in effect and detail the obligations of the office and the participant, including the amount to be paid to the participant. The agreement may also specify the geographic location and subject matter area of teaching service for which loan repayment will be provided.

(3) At the end of each school year, a participant under this section shall provide evidence to the office that the requisite teaching service has been provided. Upon receipt of the evidence, the office shall pay the participant the agreed-upon amount for one year of full-time teaching service or a prorated amount for less than full-time teaching service. To qualify for additional loan repayments, the participant must be engaged in continuous teaching service as defined by the office.

(4) The office may, at its discretion, arrange to make the loan repayment directly to the holder of the participant's federal student loan.

(5) The office's obligations to a participant under this section shall cease when:

(a) The terms of the agreement have been fulfilled;

(b) The participant fails to maintain continuous teaching service as determined by the office; or

(c) All of the participant's federal student loans have been repaid.

(6) The office shall adopt rules governing loan repayments, including approved leaves of absence from continuous teaching service and other deferments as may be necessary. [2011 1st sp.s. c 11 § 180; 2004 c 58 § 8.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.102.060 Repayment obligation. (Effective until July 1, 2012.) (1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest and an equalization fee, unless they teach for two years in an approved education program for each year of scholarship received, under rules adopted by the board. Participants who teach in a designated teacher shortage area shall have one year of loan canceled for each year they teach in the shortage area.

(2) The interest rate shall be determined by the board. Participants who fail to complete the teaching service shall incur an equalization fee based on the remaining unforgiven balance of the loan. The equalization fee shall be added to the remaining balance and repaid by the participant.

(3) The minimum payment shall be set by the board. The maximum period for repayment shall be ten years, with payments of principal and interest commencing six months from the date the participant completes or discontinues the course of study. The interest rate shall be determined by the board and be established by rule. Provisions for deferral of payment shall be determined by the board. The board shall establish an appeal process by rule.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant teaches in an approved education program until the entire repayment obligation is satisfied. Should the participant cease to teach in an approved education program in this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited in the future teachers conditional scholarship account and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

(7) The board shall adopt rules to define the terms of repayment, including applicable interest rates, fees, and deferments. [2011 c 26 § 4; 2004 c 58 § 7; 1996 c 53 § 2; 1993 c 423 § 1; 1991 c 164 § 6; 1987 c 437 § 6.]

Additional notes found at www.leg.wa.gov

28B.102.060 Repayment obligation. (Effective July 1, 2012.) (1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest and an equalization fee, unless they teach for two years in an approved education program for each year of scholarship received, under rules adopted by the office. Participants who teach in a designated teacher shortage area shall have one year of loan canceled for each year they teach in the shortage area.

(2) The interest rate shall be determined by the office. Participants who fail to complete the teaching service shall incur an equalization fee based on the remaining unforgiven balance of the loan. The equalization fee shall be added to the remaining balance and repaid by the participant.

(3) The minimum payment shall be set by the office. The maximum period for repayment shall be ten years, with payments of principal and interest commencing six months from the date the participant completes or discontinues the course of study. The interest rate shall be determined by the office and be established by rule. Provisions for deferral of payment shall be determined by the office. The office shall establish an appeal process by rule.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the partic-

ipant teaches in an approved education program until the entire repayment obligation is satisfied. Should the participant cease to teach in an approved education program in this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

(5) The office is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary. The office is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the office as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited in the future teachers conditional scholarship account and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The office shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

(7) The office shall adopt rules to define the terms of repayment, including applicable interest rates, fees, and deferments. [2011 1st sp.s. c 11 § 181; 2011 c 26 § 4; 2004 c 58 § 7; 1996 c 53 § 2; 1993 c 423 § 1; 1991 c 164 § 6; 1987 c 437 § 6.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

28B.102.080 Future teachers conditional scholarship account. (Effective July 1, 2012.) (1) The future teachers conditional scholarship account is created in the custody of the state treasurer. An appropriation is not required for expenditures of funds from the account. The account is not subject to allotment procedures under chapter 43.88 RCW except for moneys used for program administration.

(2) The office shall deposit in the account all moneys received for the future teachers conditional scholarship and loan repayment program and for conditional loan programs under chapter 28A.660 RCW. The account shall be self-sustaining and consist of funds appropriated by the legislature for the future teachers conditional scholarship and loan repayment program, private contributions to the program, receipts from participant repayments from the future teachers conditional scholarship and loan repayment program, and conditional loan programs established under chapter 28A.660 RCW. Beginning July 1, 2004, the office shall also deposit into the account: (a) All funds from the institution of higher education loan account that are traceable to any conditional scholarship program for teachers or prospective teachers

established by the legislature before June 10, 2004; and (b) all amounts repaid by individuals under any such program.

(3) Expenditures from the account may be used solely for conditional loans and loan repayments to participants in the future teachers conditional scholarship and loan repayment program established by this chapter, conditional scholarships for participants in programs established in chapter 28A.660 RCW, and costs associated with program administration by the office.

(4) Disbursements from the account may be made only on the authorization of the office.

(5) During the 2009-2011 fiscal biennium, the legislature may transfer from the future teachers conditional scholarship account to the state general fund such amounts as reflect the excess fund balance of the account. [2011 1st sp.s. c 11 § 182; 2010 1st sp.s. c 37 § 917; 2007 c 396 § 9; 2004 c 58 § 9.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Captions not law—2007 c 396: See note following RCW 28A.305.215.

Finding—Intent—2007 c 396: See note following RCW 28A.300.515.

Chapter 28B.105 RCW

GET READY FOR MATH AND SCIENCE SCHOLARSHIP PROGRAM

Sections

28B.105.020	Definitions. (<i>Effective July 1, 2012.</i>)
28B.105.040	Changes in eligibility—Consequences. (<i>Effective July 1, 2012.</i>)
28B.105.050	Repayment obligation—Conditions. (<i>Effective July 1, 2012.</i>)
28B.105.070	Office of student financial assistance—Duties. (<i>Effective July 1, 2012.</i>)
28B.105.100	Office of student financial assistance and program administrator—Joint duties. (<i>Effective July 1, 2012.</i>)
28B.105.110	GET ready for math and science scholarship account. (<i>Effective July 1, 2012.</i>)

28B.105.020 Definitions. (*Effective July 1, 2012.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "GET units" means tuition units under the advanced college tuition payment program in chapter 28B.95 RCW.

(2) "Institution of higher education" has the same meaning as in RCW 28B.92.030.

(3) "Office" means the office of student financial assistance.

(4) "Program administrator" means the private nonprofit corporation that is registered under Title 24 RCW and qualified as a tax-exempt entity under section 501(c)(3) of the federal internal revenue code, that will serve as the private partner in the public-private partnership under this chapter.

(5) "Qualified program" or "qualified major" means a mathematics, science, or related degree program or major line of study offered by an institution of higher education that is included on the list of programs or majors selected by the *board and the program administrator under RCW 28B.105.100. [2011 1st sp.s. c 11 § 183; 2007 c 214 § 2.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office

of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.105.040 Changes in eligibility—Consequences. (*Effective July 1, 2012.*) (1) If the student enrolls in a qualified program or declares a qualified major and the program or major is subsequently removed from the list of qualified programs and qualified majors by the office and the program administrator, the student's eligibility to receive a GET ready for math and science scholarship shall not be affected.

(2) If a student who received a GET ready for math and science scholarship ceases to be enrolled in an institution of higher education, withdraws or is no longer enrolled in a qualified program, declares a major that is not a qualified major, or otherwise is no longer eligible to receive a GET ready for math and science scholarship, the student shall notify the program administrator as soon as practicable and is not eligible for further GET ready for math and science scholarship awards. Such a student shall also repay the amount of the GET ready for math and science scholarship awarded to the student as required by RCW 28B.105.050. [2011 1st sp.s. c 11 § 184; 2007 c 214 § 4.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.105.050 Repayment obligation—Conditions. (*Effective July 1, 2012.*) (1) A recipient of a GET ready for math and science scholarship incurs an obligation to repay the scholarship, with interest and an equalization fee, if he or she does not:

(a) Graduate with a bachelor's degree from a qualified program or in a qualified major within five years of first enrolling at an institution of higher education; and

(b) Work in Washington in a mathematics, science, or related occupation full time for at least three years following completion of a bachelor's degree, unless he or she is enrolled in a graduate degree program as provided in subsection (4) of this section.

(2) A former scholarship recipient who has earned a bachelor's degree shall annually verify to the office that he or she is working full time in a mathematics, science, or related field for three years.

(3) If a former scholarship recipient begins but then stops working full time in a mathematics, science, or related field within three years following completion of a bachelor's degree, he or she shall pay back a prorated portion of the amount of the GET ready for math and science scholarship award received by the recipient, plus interest and a prorated equalization fee.

(4) A recipient may postpone for up to three years his or her in-state work obligation if he or she enrolls full time in a graduate degree program in mathematics, science, or a related field. [2011 1st sp.s. c 11 § 185; 2007 c 214 § 5.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.105.070 Office of student financial assistance—Duties. (*Effective July 1, 2012.*) The office shall:

(1) Purchase GET units to be owned and held in trust by the office, for the purpose of scholarship awards as provided for in this section;

(2) Distribute scholarship funds, in the form of GET units or through direct payments from the GET ready for math and science scholarship account, to institutions of higher education on behalf of eligible recipients identified by the program administrator;

(3) Provide the program administrator with annual reports regarding enrollment, contact, and graduation information of GET ready for math and science scholarship recipients, if the recipients have given permission for the office to do so;

(4) Collect repayments from former scholarship recipients who do not meet the eligibility criteria or work obligations;

(5) Establish rules for scholarship repayment, approved leaves of absence, deferments, and exceptions to recognize extenuating circumstances that may impact students; and

(6) Provide information to school districts in Washington, at least once per year, about the GET ready for math and science scholarship program. [2011 1st sp.s. c 11 § 186; 2007 c 214 § 7.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.105.100 Office of student financial assistance and program administrator—Joint duties. (*Effective July 1, 2012.*) The office and the program administrator shall jointly:

(1) Determine criteria for qualifying undergraduate programs, majors, and courses leading to a bachelor's degree in mathematics, science, or a related field, offered by institutions of higher education. The office shall publish the criteria for qualified courses, and lists of qualified programs and qualified majors, on its web site on a biennial basis; and

(2) Establish criteria for selecting among eligible applicants those who, without scholarship assistance, would be least likely to pursue a qualified undergraduate program at an institution of higher education in Washington state. [2011 1st sp.s. c 11 § 187; 2007 c 214 § 10.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.105.110 GET ready for math and science scholarship account. (*Effective July 1, 2012.*) (1) The GET ready for math and science scholarship account is created in the custody of the state treasurer.

(2) The office shall deposit into the account all money received for the GET ready for math and science scholarship program from appropriations and private sources. The account shall be self-sustaining.

(3) Expenditures from the account shall be used for scholarships to eligible students and for purchases of GET units. Purchased GET units shall be owned and held in trust by the office. Expenditures from the account shall be an equal match of state appropriations and private funds raised

by the program administrator. During the 2009-2011 fiscal biennium, expenditures from the account not to exceed five percent may be used by the program administrator to carry out the provisions of RCW 28B.105.090.

(4) With the exception of the operating costs associated with the management of the account by the treasurer's office as authorized in chapter 43.79A RCW, the account shall be credited with all investment income earned by the account.

(5) Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW.

(6) Disbursements from the account shall be made only on the authorization of the office.

(7) During the 2009-2011 fiscal biennium, the legislature may transfer from the GET ready for math and science scholarship account to the state general fund such amounts as have not been donated from or matched by private contributions. [2011 1st sp.s. c 11 § 188; 2010 1st sp.s. c 37 § 918. Prior: 2009 c 564 § 1807; 2009 c 564 § 920; 2008 c 329 § 908; 2007 c 214 § 11.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—2008 c 329: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 329 § 928.]

Effective date—2008 c 329: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2008]." [2008 c 329 § 929.]

Chapter 28B.106 RCW

COLLEGE SAVINGS BOND PROGRAM

Sections

28B.106.010 Definitions. (*Effective July 1, 2012.*)

28B.106.070 Publicity—Marketing strategies and educational programs. (*Effective July 1, 2012.*)

28B.106.010 Definitions. (*Effective July 1, 2012.*) The following definitions shall apply throughout this chapter, unless the context clearly indicates otherwise:

(1) "College savings bonds" or "bonds" are Washington state general obligation bonds, issued under the authority of and in accordance with this chapter.

(2) "Office" means the office of student financial assistance, or any successor thereto. [2011 1st sp.s. c 11 § 189; 1988 c 125 § 9.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.106.070 Publicity—Marketing strategies and educational programs. (*Effective July 1, 2012.*) The office and the state finance committee shall create and implement marketing strategies and educational programs designed to publicize the college savings bond program to Washington residents. [2011 1st sp.s. c 11 § 190; 1988 c 125 § 16.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Chapter 28B.108 RCW

AMERICAN INDIAN ENDOWED SCHOLARSHIP PROGRAM

Sections

- 28B.108.010 Definitions. (*Effective July 1, 2012.*)
 28B.108.020 Program created—Duties of the office of student financial assistance—Screening committee. (*Effective July 1, 2012.*)
 28B.108.030 Advisory committee. (*Effective July 1, 2012.*)
 28B.108.060 Scholarship endowment fund. (*Effective July 1, 2012.*)

28B.108.010 Definitions. (*Effective July 1, 2012.*)

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

(1) "Eligible student" or "student" means an American Indian who is a financially needy student, as defined in RCW 28B.92.030, who is a resident student, as defined by RCW 28B.15.012(2), who is a full-time student at an institution of higher education, and who promises to use his or her education to benefit other American Indians.

(2) "Institution of higher education" or "institution" means a college or university in the state of Washington which is accredited by an accrediting association recognized as such by rule of the council for higher education.

(3) "Office" means the office of student financial assistance. [2011 1st sp.s. c 11 § 191; 2004 c 275 § 69; 1991 c 228 § 10; 1990 c 287 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.108.020 Program created—Duties of the office of student financial assistance—Screening committee. (*Effective July 1, 2012.*) The American Indian endowed scholarship program is created. The program shall be administered by the office. In administering the program, the *board's powers and duties shall include but not be limited to:

(1) Selecting students to receive scholarships, with the assistance of a screening committee composed of persons involved in helping American Indian students to obtain a higher education. The membership of the committee may include, but is not limited to representatives of: Indian tribes, urban Indians, the governor's office of Indian affairs, the Washington state Indian education association, and institutions of higher education;

(2) Adopting necessary rules and guidelines;

(3) Publicizing the program;

(4) Accepting and depositing donations into the endowment fund created in RCW 28B.108.060;

(5) Requesting from the state investment board and accepting from the state treasurer moneys earned from the endowment fund created in RCW 28B.108.060;

(6) Soliciting and accepting grants and donations from public and private sources for the program; and

(7) Naming scholarships in honor of those American Indians from Washington who have acted as role models. [2011 1st sp.s. c 11 § 192; 2009 c 259 § 1; 1990 c 287 § 3.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.108.030 Advisory committee. (*Effective July 1, 2012.*)

The office shall establish an advisory committee to assist in program design and to develop criteria for the screening and selection of scholarship recipients. The committee shall be composed of representatives of the same groups as the screening committee described in RCW 28B.108.020. The criteria shall assess the student's social and cultural ties to an American Indian community within the state. The criteria shall include a priority for upper-division or graduate students. The criteria may include a priority for students who are majoring in program areas in which expertise is needed by the state's American Indians. [2011 1st sp.s. c 11 § 193; 1991 c 228 § 11; 1990 c 287 § 4.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.108.060 Scholarship endowment fund. (*Effective July 1, 2012.*)

The American Indian scholarship endowment fund is created in the custody of the state treasurer. The investment of the endowment fund shall be managed by the state investment board. Funds appropriated by the legislature for the endowment fund must be deposited into the fund.

(1) Moneys received from the office, private donations, state moneys, and funds received from any other source may be deposited into the endowment fund. Private moneys received as a gift subject to conditions may be deposited into the fund.

(2) At the request of the office, the state investment board shall release earnings from the endowment fund to the state treasurer. The state treasurer shall then release those funds at the request of the office for scholarships. No appropriation is required for expenditures from the endowment fund.

(3) When notified by the office that a condition attached to a gift of private moneys in the fund has failed, the state investment board shall release those moneys to the office. The office shall then release the moneys to the donors according to the terms of the conditional gift.

(4) The principal of the endowment fund shall not be invaded. The release of moneys under subsection (3) of this section shall not constitute an invasion of corpus.

(5) The earnings on the fund shall be used solely for the purposes set forth in RCW 28B.108.040, except when the terms of a conditional gift of private moneys in the fund require that a portion of earnings on such moneys be reinvested in the fund. [2011 1st sp.s. c 11 § 194; 2009 c 259 § 2;

2007 c 73 § 2; 1993 c 372 § 1; 1991 sp.s. c 13 § 110; 1990 c 287 § 7.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

Chapter 28B.109 RCW

WASHINGTON INTERNATIONAL EXCHANGE SCHOLARSHIP PROGRAM

Sections

- 28B.109.010 Definitions. (*Effective July 1, 2012.*)
 28B.109.020 Washington international exchange scholarship program—Administration by office of student financial assistance. (*Effective July 1, 2012.*)
 28B.109.030 Reciprocal agreements to attend foreign institutions. (*Effective July 1, 2012.*)
 28B.109.040 Washington international exchange student scholarships. (*Effective July 1, 2012.*)
 28B.109.050 Washington international exchange trust fund. (*Effective July 1, 2012.*)
 28B.109.060 Washington international exchange scholarship endowment fund. (*Effective July 1, 2012.*)
 28B.109.070 Washington international exchange scholarship endowment fund—State matching funds. (*Effective July 1, 2012.*)
 28B.109.080 Scholarship recipients—Service obligation. (*Effective July 1, 2012.*)

28B.109.010 Definitions. (*Effective July 1, 2012.*)

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

(1) "Eligible participant" means an international student whose country of residence has a trade relationship with the state of Washington.

(2) "Institution of higher education" or "institution" means a college or university in the state of Washington that is accredited by an accrediting association recognized as such by rule of the *board.

(3) "Office" means the office of student financial assistance.

(4) "Service obligation" means volunteering for a minimum number of hours as established by the **board based on the amount of scholarship award, to speak to or teach groups of Washington citizens, including but not limited to elementary, middle, and high schools, service clubs, and universities.

(5) "Washington international exchange scholarship program" means a scholarship award for a period not to exceed one academic year to attend a Washington institution of higher education made to an international student whose country has an established trade relationship with Washington. [2011 1st sp.s. c 11 § 195; 1996 c 253 § 401.]

Reviser's note: *(1) The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

***(2) The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—1996 c 253: "(1) The legislature finds that:

(a) Educational, cultural, and business exchange programs are important in developing mutually beneficial relationships between Washington state and other countries;

(b) Enhanced international trade, cultural, and educational opportuni-

ties are developed when cities, counties, ports, and others establish sister relationships with their counterparts in other countries;

(c) It is important to the economic future of the state to promote international awareness and understanding; and

(d) The state's economy and economic well-being depend heavily on foreign trade and international exchanges.

(2) The legislature declares that the purpose of chapter 253, Laws of 1996 is to:

(a) Enhance Washington state's ability to develop relationships and contacts throughout the world enabling us to expand international education and trade opportunities for all citizens of the state;

(b) Develop and maintain an international database of contacts in international trade markets;

(c) Encourage outstanding international students who reside in countries with existing trade relationships to attend Washington state's institutions of higher education; and

(d) Encourage Washington students to attend institutions of higher education located in countries with existing trading relationships with Washington state." [1996 c 253 § 1.]

Additional notes found at www.leg.wa.gov

28B.109.020 Washington international exchange scholarship program—Administration by office of student financial assistance. (*Effective July 1, 2012.*) The Washington international exchange scholarship program is created subject to funding under RCW 28B.109.060. The program shall be administered by the office. In administering the program, the office may:

(1) Convene an advisory committee that may include but need not be limited to representatives of the office of the superintendent of public instruction, the department of commerce, the secretary of state, private business, and institutions of higher education;

(2) Select students to receive the scholarship with the assistance of a screening committee composed of leaders in business, international trade, and education;

(3) Adopt necessary rules and guidelines including rules for disbursing scholarship funds to participants;

(4) Publicize the program;

(5) Solicit and accept grants and donations from public and private sources for the program;

(6) Establish and notify participants of service obligations; and

(7) Establish a formula for selecting the countries from which participants may be selected in consultation with the *department of community, trade, and economic development. [2011 1st sp.s. c 11 § 196; 1996 c 253 § 402.]

***Reviser's note:** The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

28B.109.030 Reciprocal agreements to attend foreign institutions. (*Effective July 1, 2012.*) The office may negotiate and enter into a reciprocal agreement with foreign countries that have international students attending institutions in Washington. The goal of the reciprocal agreements shall be to allow Washington students enrolled in an institution of higher education to attend an international institution under similar terms and conditions. [2011 1st sp.s. c 11 § 197; 1996 c 253 § 403.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

28B.109.040 Washington international exchange student scholarships. (Effective July 1, 2012.) If funds are available, the office shall select students yearly to receive a Washington international exchange student scholarship from moneys earned from the Washington international exchange scholarship endowment fund created in RCW 28B.109.060, from funds appropriated to the office for this purpose, or from any private donations, or from any other funds given to the office for this program. [2011 1st sp.s. c 11 § 198; 1996 c 253 § 404.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

28B.109.050 Washington international exchange trust fund. (Effective July 1, 2012.) The Washington international exchange trust fund is established in the custody of the state treasurer. Any funds appropriated by the legislature for the trust fund shall be deposited into the fund. At the request of the office, and when conditions set forth in RCW 28B.109.070 are met, the treasurer shall deposit state matching moneys from the Washington international exchange trust fund into the Washington international exchange scholarship endowment fund. No appropriation is required for expenditures from the trust fund. [2011 1st sp.s. c 11 § 199; 1996 c 253 § 405.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

28B.109.060 Washington international exchange scholarship endowment fund. (Effective July 1, 2012.) The Washington international exchange scholarship endowment fund is established in the custody of the state treasurer. Moneys received from the private donations and funds received from any other source may be deposited into the endowment fund. At the request of the office, the treasurer shall release earnings from the endowment fund to the office for scholarships. No appropriation is required for expenditures from the endowment fund. The principal of the endowment fund shall not be invaded. The earnings on the fund shall be used solely for the purposes in this chapter. [2011 1st sp.s. c 11 § 200; 1996 c 253 § 406.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

28B.109.070 Washington international exchange scholarship endowment fund—State matching funds.

(Effective July 1, 2012.) The office may request that the treasurer deposit state matching funds into the Washington international exchange scholarship endowment fund when the office can match the state funds with an equal amount of private cash donations, including conditional gifts. [2011 1st sp.s. c 11 § 201; 1996 c 253 § 407.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

28B.109.080 Scholarship recipients—Service obligation. (Effective July 1, 2012.) Each Washington international exchange scholarship recipient shall agree to complete the service obligation as defined by the office. [2011 1st sp.s. c 11 § 202; 1996 c 253 § 408.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 28B.109.010.

Chapter 28B.110 RCW

GENDER EQUALITY IN HIGHER EDUCATION

Sections

28B.110.040 Compliance—Community colleges.

28B.110.040 Compliance—Community colleges. The executive director of the higher education coordinating board, in consultation with the council of presidents and the state board for community and technical colleges, shall monitor the compliance by institutions of higher education with this chapter.

(1) The board shall establish a timetable and guidelines for compliance with this chapter.

(2) By November 30, 1990, each institution shall submit to the board for approval a plan to comply with the requirements of RCW 28B.110.030. The plan shall contain measures to ensure institutional compliance with the provisions of this chapter by September 30, 1994. If participation in activities, such as intercollegiate athletics and matriculation in academic programs is not proportionate to the percentages of male and female enrollment, the plan should outline efforts to identify barriers to equal participation and to encourage gender equity in all aspects of college and university life.

(3) The board may delegate to the state board for community and technical colleges any or all responsibility for community college compliance with the provisions of this chapter. [2011 1st sp.s. c 11 § 203; 1997 c 5 § 5; 1989 c 341 § 4.]

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Additional notes found at www.leg.wa.gov

Chapter 28B.115 RCW
HEALTH PROFESSIONAL
CONDITIONAL SCHOLARSHIP PROGRAM

Sections

28B.115.020	Definitions. (<i>Effective until July 1, 2012.</i>)
28B.115.020	Definitions. (<i>Effective July 1, 2012.</i>)
28B.115.030	Program established—Duties of office. (<i>Effective July 1, 2012.</i>)
28B.115.050	Planning committee—Criteria for selecting participants. (<i>Effective July 1, 2012.</i>)
28B.115.060	Repealed.
28B.115.070	Eligible credentialed health care professions—Health professional shortage areas. (<i>Effective July 1, 2012.</i>)
28B.115.080	Annual award amount—Scholarship preferences—Required service obligations. (<i>Effective July 1, 2012.</i>)
28B.115.090	Loan repayment and scholarship awards. (<i>Effective July 1, 2012.</i>)
28B.115.110	Participant obligation—Repayment obligation—Appeals from determinations. (<i>Effective until July 1, 2012.</i>)
28B.115.110	Participant obligation—Repayment obligation—Appeals from determinations. (<i>Effective July 1, 2012.</i>)
28B.115.120	Participant obligation—Scholarships—Appeals. (<i>Effective until July 1, 2012.</i>)
28B.115.120	Participant obligation—Scholarships—Appeals. (<i>Effective July 1, 2012.</i>)
28B.115.130	Health professional loan repayment and scholarship program fund. (<i>Effective July 1, 2012.</i>)
28B.115.140	Transfer of program administration. (<i>Effective July 1, 2012.</i>)
28B.115.150	Osteopathic or allopathic medical student clinical rotations.
28B.115.155	Osteopathic or allopathic medical student clinical rotations—Foreign medical schools.

28B.115.020 Definitions. (*Effective until July 1, 2012.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the higher education coordinating board.

(2) "Credentialed health care profession" means a health care profession regulated by a disciplining authority in the state of Washington under RCW 18.130.040 or by the state board of pharmacy under chapter 18.64 RCW and designated by the department in RCW 28B.115.070 as a profession having shortages of credentialed health care professionals in the state.

(3) "Credentialed health care professional" means a person regulated by a disciplining authority in the state of Washington to practice a health care profession under RCW 18.130.040 or by the state board of pharmacy under chapter 18.64 RCW.

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

(5) "Eligible education and training programs" means education and training programs approved by the department that lead to eligibility for a credential as a credentialed health care professional.

(6) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses determined by the board.

(7) "Eligible student" means a student who has been accepted into an eligible education or training program and has a declared intention to serve in a health professional shortage area upon completion of the education or training program.

(8) "Forgiven" or "to forgive" or "forgiveness" means to render health care services in a health professional shortage area in the state of Washington in lieu of monetary repayment.

(9) "Health professional shortage areas" means those areas where credentialed health care professionals are in short supply as a result of geographic maldistribution or as the result of a short supply of credentialed health care professionals in specialty health care areas and where vacancies exist in serious numbers that jeopardize patient care and pose a threat to the public health and safety. The department shall determine health professional shortage areas as provided for in RCW 28B.115.070. In making health professional shortage area designations in the state the department may be guided by applicable federal standards for "health manpower shortage areas," and "medically underserved areas," and "medically underserved populations."

(10) "Loan repayment" means a loan that is paid in full or in part if the participant renders health care services in a health professional shortage area as defined by the department.

(11) "Nonshortage rural area" means a nonurban area of the state of Washington that has not been designated as a rural physician shortage area. The department shall identify the nonshortage rural areas of the state.

(12) "Participant" means a credentialed health care professional who has received a loan repayment award and has commenced practice as a credentialed health care provider in a designated health professional shortage area or an eligible student who has received a scholarship under this program.

(13) "Program" means the health professional loan repayment and scholarship program.

(14) "Required service obligation" means an obligation by the participant to provide health care services in a health professional shortage area for a period to be established as provided for in this chapter.

(15) "Rural physician shortage area" means rural geographic areas where primary care physicians are in short supply as a result of geographic maldistributions and where their limited numbers jeopardize patient care and pose a threat to public health and safety. The department shall designate rural physician shortage areas.

(16) "Satisfied" means paid-in-full.

(17) "Scholarship" means a loan that is forgiven in whole or in part if the recipient renders health care services in a health professional shortage area.

(18) "Sponsoring community" means a rural hospital or hospitals as authorized in chapter 70.41 RCW, a rural health care facility or facilities as authorized in chapter 70.175 RCW, or a city or county government or governments. [2011 c 26 § 1; 1991 c 332 § 15; 1989 1st ex.s. c 9 § 717. Formerly RCW 18.150.020.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

28B.115.020 Definitions. (*Effective July 1, 2012.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Credentialed health care profession" means a health care profession regulated by a disciplining authority in the state of Washington under RCW 18.130.040 or by the state board of pharmacy under chapter 18.64 RCW and designated by the department in RCW 28B.115.070 as a profession having shortages of credentialed health care professionals in the state.

(2) "Credentialed health care professional" means a person regulated by a disciplining authority in the state of Washington to practice a health care profession under RCW 18.130.040 or by the state board of pharmacy under chapter 18.64 RCW.

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

(4) "Eligible education and training programs" means education and training programs approved by the department that lead to eligibility for a credential as a credentialed health care professional.

(5) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses determined by the office.

(6) "Eligible student" means a student who has been accepted into an eligible education or training program and has a declared intention to serve in a health professional shortage area upon completion of the education or training program.

(7) "Forgiven" or "to forgive" or "forgiveness" means to render health care services in a health professional shortage area in the state of Washington in lieu of monetary repayment.

(8) "Health professional shortage areas" means those areas where credentialed health care professionals are in short supply as a result of geographic maldistribution or as the result of a short supply of credentialed health care professionals in specialty health care areas and where vacancies exist in serious numbers that jeopardize patient care and pose a threat to the public health and safety. The department shall determine health professional shortage areas as provided for in RCW 28B.115.070. In making health professional shortage area designations in the state the department may be guided by applicable federal standards for "health manpower shortage areas," and "medically underserved areas," and "medically underserved populations."

(9) "Loan repayment" means a loan that is paid in full or in part if the participant renders health care services in a health professional shortage area as defined by the department.

(10) "Nonshortage rural area" means a nonurban area of the state of Washington that has not been designated as a rural physician shortage area. The department shall identify the nonshortage rural areas of the state.

(11) "Office" means the office of student financial assistance.

(12) "Participant" means a credentialed health care professional who has received a loan repayment award and has commenced practice as a credentialed health care provider in a designated health professional shortage area or an eligible student who has received a scholarship under this program.

(13) "Program" means the health professional loan repayment and scholarship program.

(14) "Required service obligation" means an obligation by the participant to provide health care services in a health professional shortage area for a period to be established as provided for in this chapter.

(15) "Rural physician shortage area" means rural geographic areas where primary care physicians are in short supply as a result of geographic maldistributions and where their limited numbers jeopardize patient care and pose a threat to

public health and safety. The department shall designate rural physician shortage areas.

(16) "Satisfied" means paid-in-full.

(17) "Scholarship" means a loan that is forgiven in whole or in part if the recipient renders health care services in a health professional shortage area.

(18) "Sponsoring community" means a rural hospital or hospitals as authorized in chapter 70.41 RCW, a rural health care facility or facilities as authorized in chapter 70.175 RCW, or a city or county government or governments. [2011 1st sp.s. c 11 § 204; 2011 c 26 § 1; 1991 c 332 § 15; 1989 1st ex.s. c 9 § 717. Formerly RCW 18.150.020.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.115.030 Program established—Duties of office. (Effective July 1, 2012.) The health professional loan repayment and scholarship program is established for credentialed health professionals serving in health professional shortage areas. The program shall be administered by the office. In administering this program, the office shall:

(1) Select credentialed health care professionals to participate in the loan repayment portion of the loan repayment and scholarship program and select eligible students to participate in the scholarship portion of the loan repayment and scholarship program;

(2) Adopt rules and develop guidelines to administer the program;

(3) Collect and manage repayments from participants who do not meet their service obligations under this chapter;

(4) Publicize the program, particularly to maximize participation among individuals in shortage areas and among populations expected to experience the greatest growth in the workforce;

(5) Solicit and accept grants and donations from public and private sources for the program; and

(6) Develop criteria for a contract for service in lieu of the service obligation where appropriate, that may be a combination of service and payment. [2011 1st sp.s. c 11 § 205; 1991 c 332 § 16; 1989 1st ex.s. c 9 § 718. Formerly RCW 18.150.030.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.115.050 Planning committee—Criteria for selecting participants. (Effective July 1, 2012.) The office shall establish a planning committee to assist it in developing criteria for the selection of participants. The office shall include on the planning committee representatives of the department, the department of social and health services, appropriate representatives from health care facilities, provider groups, consumers, the state board for community and technical colleges, the superintendent of public instruction, and other appropriate public and private agencies and organizations. The criteria may require that some of the participants meet the definition of "needy student" under RCW 28B.92.030. [2011 1st sp.s. c 11 § 206; 2004 c 275 § 70;

1991 c 332 § 18; 1989 1st ex.s. c 9 § 719. Formerly RCW 18.150.040.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.115.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

28B.115.070 Eligible credentialed health care professions—Health professional shortage areas. (Effective July 1, 2012.) After June 1, 1992, the department, in consultation with the office and the department of social and health services, shall:

(1) Determine eligible credentialed health care professions for the purposes of the loan repayment and scholarship program authorized by this chapter. Eligibility shall be based upon an assessment that determines that there is a shortage or insufficient availability of a credentialed profession so as to jeopardize patient care and pose a threat to the public health and safety. The department shall consider the relative degree of shortages among professions when determining eligibility. The department may add or remove professions from eligibility based upon the determination that a profession is no longer in shortage. Should a profession no longer be eligible, participants or eligible students who have received scholarships shall be eligible to continue to receive scholarships or loan repayments until they are no longer eligible or until their service obligation has been completed;

(2) Determine health professional shortage areas for each of the eligible credentialed health care professions. [2011 1st sp.s. c 11 § 207; 2003 c 278 § 3; 1991 c 332 § 20.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—2003 c 278: See note following RCW 28C.18.120.

28B.115.080 Annual award amount—Scholarship preferences—Required service obligations. (Effective July 1, 2012.) After June 1, 1992, the office, in consultation with the department and the department of social and health services, shall:

(1) Establish the annual award amount for each credentialed health care profession which shall be based upon an assessment of reasonable annual eligible expenses involved in training and education for each credentialed health care profession. The annual award amount may be established at a level less than annual eligible expenses. The annual award amount shall be established by the office for each eligible health profession. The awards shall not be paid for more than a maximum of five years per individual;

(2) Determine any scholarship awards for prospective physicians in such a manner to require the recipients declare an interest in serving in rural areas of the state of Washington. Preference for scholarships shall be given to students who reside in a rural physician shortage area or a nonshortage rural area of the state prior to admission to the eligible education and training program in medicine. Highest preference shall be given to students seeking admission who are recom-

mended by sponsoring communities and who declare the intent of serving as a physician in a rural area. The office may require the sponsoring community located in a nonshortage rural area to financially contribute to the eligible expenses of a medical student if the student will serve in the nonshortage rural area;

(3) Establish the required service obligation for each credentialed health care profession, which shall be no less than three years or no more than five years. The required service obligation may be based upon the amount of the scholarship or loan repayment award such that higher awards involve longer service obligations on behalf of the participant;

(4) Determine eligible education and training programs for purposes of the scholarship portion of the program;

(5) Honor loan repayment and scholarship contract terms negotiated between the office and participants prior to May 21, 1991, concerning loan repayment and scholarship award amounts and service obligations authorized under chapter 28B.115, *28B.104, or 70.180 RCW. [2011 1st sp.s. c 11 § 208; 1993 c 492 § 271; 1991 c 332 § 21.]

***Reviser's note:** Chapter 28B.104 RCW was repealed by 1991 sp.s. c 27 § 2.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Finding—1993 c 492: "The legislature finds that the successful implementation of health care reform will depend on a sufficient supply of primary health care providers throughout the state. Many rural and medically underserved urban areas lack primary health care providers and because of this, basic health care services are limited or unavailable to populations living in these areas. The legislature has in recent years initiated new programs to address these provider shortages but funding has been insufficient and additional specific provider shortages remain." [1993 c 492 § 269.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

28B.115.090 Loan repayment and scholarship awards. (Effective July 1, 2012.) (1) The office may grant loan repayment and scholarship awards to eligible participants from the funds appropriated for this purpose, or from any private or public funds given to the office for this purpose. Participants are ineligible to receive loan repayment if they have received a scholarship from programs authorized under this chapter or chapter 70.180 RCW or are ineligible to receive a scholarship if they have received loan repayment authorized under this chapter or chapter 28B.115 RCW.

(2) Funds appropriated for the program, including reasonable administrative costs, may be used by the office for the purposes of loan repayments or scholarships. The office shall annually establish the total amount of funding to be awarded for loan repayments and scholarships and such allocations shall be established based upon the best utilization of funding for that year.

(3) One portion of the funding appropriated for the program shall be used by the office as a recruitment incentive for communities participating in the community-based recruitment and retention program as authorized by chapter 70.185 RCW; one portion of the funding shall be used by the office as a recruitment incentive for recruitment activities in state-operated institutions, county public health departments and districts, county human service agencies, federal and state contracted community health clinics, and other health care

facilities, such as rural hospitals that have been identified by the department, as providing substantial amounts of charity care or publicly subsidized health care; one portion of the funding shall be used by the office for all other awards. The office shall determine the amount of total funding to be distributed between the three portions. [2011 1st sp.s. c 11 § 209; 2003 c 278 § 4; 1991 c 332 § 22; 1989 1st ex.s. c 9 § 720. Formerly RCW 18.150.050.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—2003 c 278: See note following RCW 28C.18.120.

28B.115.110 Participant obligation—Repayment obligation—Appeals from determinations. (Effective until July 1, 2012.) Participants in the health professional loan repayment and scholarship program who are awarded loan repayments shall receive payment from the program for the purpose of repaying educational loans secured while attending a program of health professional training which led to a credential as a credentialed health professional in the state of Washington.

(1) Participants shall agree to meet the required service obligation in a designated health professional shortage area.

(2) Repayment shall be limited to eligible educational and living expenses as determined by the board and shall include principal and interest.

(3) Loans from both government and private sources may be repaid by the program. Participants shall agree to allow the board access to loan records and to acquire information from lenders necessary to verify eligibility and to determine payments. Loans may not be renegotiated with lenders to accelerate repayment.

(4) Repayment of loans established pursuant to this program shall begin no later than ninety days after the individual has become a participant. Payments shall be made quarterly, or more frequently if deemed appropriate by the board, to the participant until the loan is repaid or the participant becomes ineligible due to discontinued service in a health professional shortage area or after the required service obligation when eligibility discontinues, whichever comes first.

(5) Should the participant discontinue service in a health professional shortage area, payments against the loans of the participants shall cease to be effective on the date that the participant discontinues service.

(6) Except for circumstances beyond their control, participants who serve less than the required service obligation shall be obligated to repay to the program an amount equal to twice the total amount paid by the program on their behalf. This amount is due and payable immediately. Participants who are unable to pay the full amount due shall enter into a payment arrangement with the board, including an arrangement for payment of interest. The maximum period for repayment is ten years. The board shall determine the applicability of this subsection. The interest rate shall be determined by the board and be established by rule.

(7) The board is responsible for the collection of payments made on behalf of participants from the participants who discontinue service before completion of the required service obligation. The board shall exercise due diligence in such collection, maintaining all necessary records to ensure

that the maximum amount of payment made on behalf of the participant is recovered. Collection under this section shall be pursued using the full extent of the law, including wage garnishment if necessary.

(8) The board shall not be held responsible for any outstanding payments on principal and interest to any lenders once a participant's eligibility expires.

(9) The board shall temporarily or, in special circumstances, permanently defer the requirements of this section for eligible students as defined in RCW 28B.10.017.

(10) The board shall establish an appeal process by rule. [2011 c 26 § 2. Prior: 1991 c 332 § 24; 1991 c 164 § 8; 1989 1st ex.s. c 9 § 721. Formerly RCW 18.150.060.]

28B.115.110 Participant obligation—Repayment obligation—Appeals from determinations. (Effective July 1, 2012.) Participants in the health professional loan repayment and scholarship program who are awarded loan repayments shall receive payment from the program for the purpose of repaying educational loans secured while attending a program of health professional training which led to a credential as a credentialed health professional in the state of Washington.

(1) Participants shall agree to meet the required service obligation in a designated health professional shortage area.

(2) Repayment shall be limited to eligible educational and living expenses as determined by the office and shall include principal and interest.

(3) Loans from both government and private sources may be repaid by the program. Participants shall agree to allow the office access to loan records and to acquire information from lenders necessary to verify eligibility and to determine payments. Loans may not be renegotiated with lenders to accelerate repayment.

(4) Repayment of loans established pursuant to this program shall begin no later than ninety days after the individual has become a participant. Payments shall be made quarterly, or more frequently if deemed appropriate by the office, to the participant until the loan is repaid or the participant becomes ineligible due to discontinued service in a health professional shortage area or after the required service obligation when eligibility discontinues, whichever comes first.

(5) Should the participant discontinue service in a health professional shortage area, payments against the loans of the participants shall cease to be effective on the date that the participant discontinues service.

(6) Except for circumstances beyond their control, participants who serve less than the required service obligation shall be obligated to repay to the program an amount equal to twice the total amount paid by the program on their behalf. This amount is due and payable immediately. Participants who are unable to pay the full amount due shall enter into a payment arrangement with the office, including an arrangement for payment of interest. The maximum period for repayment is ten years. The office shall determine the applicability of this subsection. The interest rate shall be determined by the office and be established by rule.

(7) The office is responsible for the collection of payments made on behalf of participants from the participants who discontinue service before completion of the required service obligation. The office shall exercise due diligence in

such collection, maintaining all necessary records to ensure that the maximum amount of payment made on behalf of the participant is recovered. Collection under this section shall be pursued using the full extent of the law, including wage garnishment if necessary.

(8) The office shall not be held responsible for any outstanding payments on principal and interest to any lenders once a participant's eligibility expires.

(9) The office shall temporarily or, in special circumstances, permanently defer the requirements of this section for eligible students as defined in RCW 28B.10.017.

(10) The office shall establish an appeal process by rule. [2011 1st sp.s. c 11 § 210; 2011 c 26 § 2. Prior: 1991 c 332 § 24; 1991 c 164 § 8; 1989 1st ex.s. c 9 § 721. Formerly RCW 18.150.060.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.115.120 Participant obligation—Scholarships—Appeals. (Effective until July 1, 2012.) (1) Participants in the health professional loan repayment and scholarship program who are awarded scholarships incur an obligation to repay the scholarship, with penalty and interest, unless they serve the required service obligation in a health professional shortage area in the state of Washington.

(2) The interest rate shall be determined by the board and established by rule.

(3) The period for repayment shall coincide with the required service obligation, with payments of principal and interest commencing no later than six months from the date the participant completes or discontinues the course of study or completes or discontinues the required postgraduate training. Provisions for deferral of payment shall be determined by the board.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant serves in a health professional shortage area until the entire repayment obligation is satisfied or the borrower ceases to so serve. Should the participant cease to serve in a health professional shortage area of this state before the participant's repayment obligation is completed, payment of the unsatisfied portion of the principal and interest is due and payable immediately.

(5) In addition to the amount determined in subsection (4) of this section, except for circumstances beyond their control, participants who serve less than the required service obligation shall be obliged to pay a penalty of an amount equal to twice the unsatisfied portion of the principal.

(6) Participants who are unable to pay the full amount due shall enter into a payment arrangement with the board for repayment including interest. The maximum period for repayment is ten years.

(7) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty associa-

tion or its successor agency. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(8) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the board and shall be used to cover the costs of granting the scholarships, maintaining necessary records, and making collections under subsection (7) of this section. The board shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant scholarships to eligible students.

(9) Sponsoring communities who financially contribute to the eligible financial expenses of eligible medical students may enter into agreements with the student to require repayment should the student not serve the required service obligation in the community as a primary care physician. The board may develop criteria for the content of such agreements with respect to reasonable provisions and obligations between communities and eligible students.

(10) The board may make exceptions to the conditions for participation and repayment obligations should circumstances beyond the control of individual participants warrant such exceptions. The board shall establish an appeal process by rule. [2011 c 26 § 3; 1993 c 423 § 2; 1991 c 332 § 25.]

28B.115.120 Participant obligation—Scholarships—Appeals. (Effective July 1, 2012.) (1) Participants in the health professional loan repayment and scholarship program who are awarded scholarships incur an obligation to repay the scholarship, with penalty and interest, unless they serve the required service obligation in a health professional shortage area in the state of Washington.

(2) The interest rate shall be determined by the office and established by rule.

(3) The period for repayment shall coincide with the required service obligation, with payments of principal and interest commencing no later than six months from the date the participant completes or discontinues the course of study or completes or discontinues the required postgraduate training. Provisions for deferral of payment shall be determined by the office.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant serves in a health professional shortage area until the entire repayment obligation is satisfied or the borrower ceases to so serve. Should the participant cease to serve in a health professional shortage area of this state before the participant's repayment obligation is completed, payment of the unsatisfied portion of the principal and interest is due and payable immediately.

(5) In addition to the amount determined in subsection (4) of this section, except for circumstances beyond their control, participants who serve less than the required service obligation shall be obliged to pay a penalty of an amount equal to twice the unsatisfied portion of the principal.

(6) Participants who are unable to pay the full amount due shall enter into a payment arrangement with the office for

repayment including interest. The maximum period for repayment is ten years.

(7) The office is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to ensure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary, and shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency. The office is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(8) Receipts from the payment of principal or interest or any other subsidies to which the office as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited with the office and shall be used to cover the costs of granting the scholarships, maintaining necessary records, and making collections under subsection (7) of this section. The office shall maintain accurate records of these costs, and all receipts beyond those necessary to pay such costs shall be used to grant scholarships to eligible students.

(9) Sponsoring communities who financially contribute to the eligible financial expenses of eligible medical students may enter into agreements with the student to require repayment should the student not serve the required service obligation in the community as a primary care physician. The office may develop criteria for the content of such agreements with respect to reasonable provisions and obligations between communities and eligible students.

(10) The office may make exceptions to the conditions for participation and repayment obligations should circumstances beyond the control of individual participants warrant such exceptions. The office shall establish an appeal process by rule. [2011 1st sp.s. c 11 § 211; 2011 c 26 § 3; 1993 c 423 § 2; 1991 c 332 § 25.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.115.130 Health professional loan repayment and scholarship program fund. (Effective July 1, 2012.) (1) Any funds appropriated by the legislature for the health professional loan repayment and scholarship program or any other public or private funds intended for loan repayments or scholarships under this program shall be placed in the account created by this section.

(2) The health professional loan repayment and scholarship program fund is created in custody of the state treasurer. All receipts from the program shall be deposited into the fund. Only the office, or its designee, may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2011 1st sp.s. c 11 § 212; 1991 c 332 § 28.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.115.140 Transfer of program administration. (Effective July 1, 2012.) After consulting with the office, the governor may transfer the administration of this program to another agency with an appropriate mission. [2011 1st sp.s. c 11 § 213; 1989 1st ex.s. c 9 § 722. Formerly RCW 18.150.070.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.115.150 Osteopathic or allopathic medical student clinical rotations. Any osteopathic or allopathic medical school receiving state funds or authorized by the higher education coordinating board may not prohibit a hospital or physician from entering into an agreement to provide student clinical rotations to qualified osteopathic or allopathic medical students. [2011 c 150 § 2.]

Findings—2011 c 150: "The legislature finds that a severe shortage of primary health care providers exists in Washington, particularly in rural and underserved areas of the state. The legislature further finds that an over reliance on specialty health care at the expense of primary care results in a health care system that is less efficient. The legislature further finds that institutions of higher education must produce more primary care providers. The legislature further finds that the efficient use of clinical sites for rotations will expand the supply of primary care providers. The legislature further finds that expanding residency programs in community health centers will increase residents' exposure to primary care practice." [2011 c 150 § 1.]

28B.115.155 Osteopathic or allopathic medical student clinical rotations—Foreign medical schools. A foreign osteopathic or allopathic medical school may not prohibit a hospital or physician from entering into an agreement to provide student clinical rotations to qualified osteopathic or allopathic medical students. [2011 c 150 § 3.]

Findings—2011 c 150: See note following RCW 28B.115.150.

Chapter 28B.116 RCW

FOSTER CARE ENDOWED SCHOLARSHIP PROGRAM

Sections

28B.116.010	Definitions. (<i>Effective July 1, 2012.</i>)
28B.116.020	Program created—Duties of the office of student financial assistance. (<i>Effective July 1, 2012.</i>)
28B.116.030	Award of scholarships. (<i>Effective July 1, 2012.</i>)
28B.116.050	Foster care endowed scholarship trust fund. (<i>Effective until July 1, 2012.</i>)
28B.116.050	Foster care endowed scholarship trust fund. (<i>Effective July 1, 2012.</i>)
28B.116.060	Foster care scholarship endowment fund. (<i>Effective July 1, 2012.</i>)
28B.116.070	State matching funds—Transfer of funds from trust fund to endowment fund. (<i>Effective July 1, 2012.</i>)

28B.116.010 Definitions. (Effective July 1, 2012.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Cost of attendance" means the cost associated with the attendance of the institution of higher education as determined by the office of student financial assistance, including but not limited to tuition, room, board, and books.

(2) "Eligible student" means a student who:

(a) Is between the ages of sixteen and twenty-three;

(b) Has been in foster care in the state of Washington for a minimum of six months since his or her fourteenth birthday;

(c) Is a financially needy student, as defined in RCW 28B.92.030;

(d) Is a resident student, as defined in RCW 28B.15.012(2);

(e) Has entered or will enter an institution of higher education in Washington state within three years of high school graduation or having successfully completed his or her GED;

(f) Is not pursuing a degree in theology; and

(g) Makes satisfactory progress towards the completion of a degree or certificate program.

(3) "Institution of higher education" means a college or university in the state of Washington that is accredited by an accrediting association recognized as such by rule of the *higher education coordinating board.

(4) "Office" means the office of student financial assistance. [2011 1st sp.s. c 11 § 214; 2005 c 215 § 2.]

Reviser's note: *(1) The higher education coordinating board was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.116.020 Program created—Duties of the office of student financial assistance. (Effective July 1, 2012.)

(1) The foster care endowed scholarship program is created. The purpose of the program is to help students who were in foster care attend an institution of higher education in the state of Washington. The foster care endowed scholarship program shall be administered by the office.

(2) In administering the program, the office's powers and duties shall include but not be limited to:

(a) Adopting necessary rules and guidelines; and

(b) Administering the foster care endowed scholarship trust fund and the foster care scholarship endowment fund.

(3) In administering the program, the office's powers and duties may include but not be limited to:

(a) Working with the department of social and health services and the superintendent of public instruction to provide information about the foster care endowed scholarship program to children in foster care in the state of Washington and to students over the age of sixteen who could be eligible for this program;

(b) Publicizing the program; and

(c) Contracting with a private agency to perform outreach to the potentially eligible students. [2011 1st sp.s. c 11 § 215; 2009 c 560 § 20; 2005 c 215 § 3.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560: See notes following RCW 18.06.080.

28B.116.030 Award of scholarships. (Effective July 1, 2012.)

(1) The office may award scholarships to eligible students from the foster care scholarship endowment fund in RCW 28B.116.060, from funds appropriated to the *board for this purpose, from any private donations, or from any other funds given to the office for the program.

(2) The office may award scholarships to eligible students from moneys earned from the foster care scholarship endowment fund created in RCW 28B.116.060, or from funds appropriated to the *board for this purpose, or from any private donations, or from any other funds given to the office for this program. For an undergraduate student, the amount of the scholarship shall not exceed the student's demonstrated financial need. For a graduate student, the amount of the scholarship shall not exceed the student's demonstrated need; or the stipend of a teaching assistant, including tuition, at the University of Washington; whichever is higher. In calculating a student's need, the office shall consider the student's costs for tuition, fees, books, supplies, transportation, room, board, personal expenses, and child care. The student's scholarship awarded under this chapter shall not exceed the amount received by a student attending a state research university. A student is eligible to receive a scholarship for a maximum of five years. However, the length of the scholarship shall be determined at the discretion of the office.

(3) Grants under this chapter shall not affect eligibility for the state student financial aid program. [2011 1st sp.s. c 11 § 216; 2005 c 215 § 4.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.116.050 Foster care endowed scholarship trust fund. (Effective until July 1, 2012.)

(1) The foster care endowed scholarship trust fund is created in the custody of the state treasurer.

(2) Funds appropriated by the legislature for the foster care endowed scholarship trust fund shall be deposited in the foster care endowed scholarship trust fund. When conditions in RCW 28B.116.070 are met, the higher education coordinating board shall deposit state matching moneys from the trust fund into the foster care scholarship endowment fund.

(3) No appropriation is required for expenditures from the trust fund.

(4) During the 2011-2013 fiscal biennium, the legislature may transfer from the foster care endowed scholarship trust fund to the state general fund such amounts as reflect the excess fund balance of the account. [2011 1st sp.s. c 50 § 929; 2005 c 215 § 6.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

28B.116.050 Foster care endowed scholarship trust fund. (Effective July 1, 2012.)

(1) The foster care endowed scholarship trust fund is created in the custody of the state treasurer.

(2) Funds appropriated by the legislature for the foster care endowed scholarship trust fund shall be deposited in the foster care endowed scholarship trust fund. When conditions in RCW 28B.116.070 are met, the office shall deposit state matching moneys from the trust fund into the foster care scholarship endowment fund.

(3) No appropriation is required for expenditures from the trust fund.

(4) During the 2011-2013 fiscal biennium, the legislature may transfer from the foster care endowed scholarship trust fund to the state general fund such amounts as reflect the excess fund balance of the account. [2011 1st sp.s. c 50 § 929; 2011 1st sp.s. c 11 § 217; 2005 c 215 § 6.]

Reviser's note: This section was amended by 2011 1st sp.s. c 11 § 217 and by 2011 1st sp.s. c 50 § 929, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.116.060 Foster care scholarship endowment fund. (Effective July 1, 2012.) The foster care scholarship endowment fund is created in the custody of the state treasurer. The investment of the endowment fund shall be managed by the state investment board.

(1) Moneys received from the office, private donations, state matching moneys, and funds received from any other source may be deposited into the foster care scholarship endowment fund. Private moneys received as a gift subject to conditions may be deposited into the endowment fund if the conditions do not violate state or federal law.

(2) At the request of the office, the state investment board shall release earnings from the endowment fund to the state treasurer. The state treasurer shall then release those funds at the request of the office for scholarships. No appropriation is required for expenditures from the endowment fund.

(3) The office may disburse grants to eligible students from the foster care scholarship endowment fund. No appropriation is required for expenditures from the endowment fund.

(4) When notified by court order that a condition attached to a gift of private moneys from the foster care scholarship endowment fund has failed, the office shall release those moneys to the donors according to the terms of the conditional gift.

(5) The principal of the foster care scholarship endowment fund shall not be invaded. For the purposes of this section, only the first twenty-five thousand dollars deposited into the foster care scholarship endowment fund shall be considered the principal. The release of moneys under subsection (4) of this section shall not constitute an invasion of the corpus.

(6) The foster care scholarship endowment fund shall be used solely for the purposes in this chapter, except when the conditional gift of private moneys in the endowment fund require a portion of the earnings on such moneys be reinvested in the endowment fund. [2011 1st sp.s. c 11 § 218; 2007 c 73 § 3; 2005 c 215 § 7.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.116.070 State matching funds—Transfer of funds from trust fund to endowment fund. (Effective July 1, 2012.) (1) The office may deposit twenty-five thousand dollars of state matching funds into the foster care scholarship endowment fund when the office can match state funds with an equal amount of private cash donations.

(2) After the initial match of twenty-five thousand dollars, state matching funds from the foster care endowed scholarship trust fund shall be released to the foster care scholarship endowment fund semiannually so long as there are funds available in the foster care endowed scholarship trust fund. [2011 1st sp.s. c 11 § 219; 2005 c 215 § 8.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Chapter 28B.117 RCW

PASSPORT TO COLLEGE PROMISE PROGRAM

Sections

28B.117.020	Definitions. <i>(Effective July 1, 2012, until June 30, 2013.)</i>
28B.117.030	Program design and implementation—Student eligibility—Scholarships. <i>(Effective July 1, 2012, until June 30, 2013.)</i>
28B.117.040	Identification of eligible students and applicants—Duties of institutions of higher education—Duties of the department of social and health services. <i>(Effective July 1, 2012, until June 30, 2013.)</i>
28B.117.050	Internet web site and outreach program. <i>(Effective July 1, 2012, until June 30, 2013.)</i>
28B.117.060	Program of supplemental educational transition planning for youth in foster care—Contract with nongovernmental entity. <i>(Effective July 1, 2012, until June 30, 2013.)</i>
28B.117.070	Reports—Recommendations. <i>(Effective July 1, 2012, until June 30, 2013.)</i>

28B.117.020 Definitions. (Effective July 1, 2012, until June 30, 2013.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Cost of attendance" means the cost associated with attending a particular institution of higher education as determined by the office, including but not limited to tuition, fees, room, board, books, personal expenses, and transportation, plus the cost of reasonable additional expenses incurred by an eligible student and approved by a financial aid administrator at the student's school of attendance.

(2) "Emancipated from foster care" means a person who was a dependent of the state in accordance with chapter 13.34 RCW and who was receiving foster care in the state of Washington when he or she reached his or her eighteenth birthday.

(3) "Financial need" means the difference between a student's cost of attendance and the student's total family contribution as determined by the method prescribed by the United States department of education.

(4) "Independent college or university" means a private, nonprofit institution of higher education, open to residents of the state, providing programs of education beyond the high school level leading to at least the baccalaureate degree, and accredited by the Northwest association of schools and colleges, and other institutions as may be developed that are approved by the *board as meeting equivalent standards as those institutions accredited under this section.

(5) "Institution of higher education" means:

(a) Any public university, college, community college, or technical college operated by the state of Washington or any political subdivision thereof; or

(b) Any independent college or university in Washington; or

(c) Any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level that is a member institution of an accrediting association recognized by rule of the *higher education coordinating board for the purposes of this section: PROVIDED, That any institution, branch, extension, or facility operating within the state of Washington that is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association, or a branch of a member institution of an accrediting association recognized by rule of the *board for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, and has an annual enrollment of at least seven hundred full-time equivalent students.

(6) "Office" means the office of student financial assistance.

(7) "Program" means the passport to college promise pilot program created in this chapter. [2011 1st sp.s. c 11 § 220; 2007 c 314 § 2.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Expiration date—2011 1st sp.s. c 11 §§ 220-225: "Sections 220 through 225 of this act expire June 30, 2013." [2011 1st sp.s. c 11 § 402.]

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.117.030 Program design and implementation—Student eligibility—Scholarships. (Effective July 1, 2012, until June 30, 2013.) (1) The office shall design and, to the extent funds are appropriated for this purpose, implement, a program of supplemental scholarship and student assistance for students who have emancipated from the state foster care system after having spent at least one year in care.

(2) The office shall convene and consult with an advisory committee to assist with program design and implementation. The committee shall include but not be limited to former foster care youth and their advocates; representatives from the state board for community and technical colleges, and from public and private agencies that assist current and former foster care recipients in their transition to adulthood; and student support specialists from public and private colleges and universities.

(3) To the extent that sufficient funds have been appropriated for this purpose, a student is eligible for assistance under this section if he or she:

(a) Emancipated from foster care on or after January 1, 2007, after having spent at least one year in foster care subsequent to his or her sixteenth birthday;

(b) Is a resident student, as defined in RCW 28B.15.012(2);

(c) Is enrolled with or will enroll on at least a half-time basis with an institution of higher education in Washington state by the age of twenty-one;

(d) Is making satisfactory academic progress toward the completion of a degree or certificate program, if receiving supplemental scholarship assistance;

(e) Has not earned a bachelor's or professional degree; and

(f) Is not pursuing a degree in theology.

(4) A passport to college scholarship under this section:

(a) Shall not exceed resident undergraduate tuition and fees at the highest-priced public institution of higher education in the state; and

(b) Shall not exceed the student's financial need, less a reasonable self-help amount defined by the *board, when combined with all other public and private grant, scholarship, and waiver assistance the student receives.

(5) An eligible student may receive a passport to college scholarship under this section for a maximum of five years after the student first enrolls with an institution of higher education or until the student turns age twenty-six, whichever occurs first. If a student turns age twenty-six during an academic year, and would otherwise be eligible for a scholarship under this section, the student shall continue to be eligible for a scholarship for the remainder of the academic year.

(6) The office, in consultation with and with assistance from the state board for community and technical colleges, shall perform an annual analysis to verify that those institutions of higher education at which students have received a scholarship under this section have awarded the student all available need-based and merit-based grant and scholarship aid for which the student qualifies.

(7) In designing and implementing the passport to college student support program under this section, the office, in consultation with and with assistance from the state board for community and technical colleges, shall ensure that a participating college or university:

(a) Has a viable plan for identifying students eligible for assistance under this section, for tracking and enhancing their academic progress, for addressing their unique needs for assistance during school vacations and academic interims, and for linking them to appropriate sources of assistance in their transition to adulthood;

(b) Receives financial and other incentives for achieving measurable progress in the recruitment, retention, and graduation of eligible students. [2011 1st sp.s. c 11 § 221; 2007 c 314 § 4.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Expiration date—2011 1st sp.s. c 11 §§ 220-225: See note following RCW 28B.117.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.117.040 Identification of eligible students and applicants—Duties of institutions of higher education—Duties of the department of social and health services.

(Effective July 1, 2012, until June 30, 2013.) Effective operation of the passport to college promise pilot program requires early and accurate identification of former foster care youth so that they can be linked to the financial and other assistance that will help them succeed in college. To that end:

(1) All institutions of higher education that receive funding for student support services under RCW 28B.117.030 shall include on their applications for admission or on their registration materials a question asking whether the applicant has been in foster care in Washington state for at least one year since his or her sixteenth birthday. All other institutions of higher education are strongly encouraged to include such a question. No institution may consider whether an applicant may be eligible for a scholarship or student support services under this chapter when deciding whether the applicant will be granted admission.

(2) The department of social and health services shall devise and implement procedures for efficiently, promptly, and accurately identifying students and applicants who are eligible for services under RCW 28B.117.030, and for sharing that information with the office and with institutions of higher education. The procedures shall include appropriate safeguards for consent by the applicant or student before disclosure. [2011 1st sp.s. c 11 § 222; 2007 c 314 § 5.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Expiration date—2011 1st sp.s. c 11 §§ 220-225: See note following RCW 28B.117.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.117.050 Internet web site and outreach program. *(Effective July 1, 2012, until June 30, 2013.)* (1) To the extent funds are appropriated for this purpose, the office, with input from the state board for community and technical colleges, the foster care partnership, and institutions of higher education, shall develop and maintain an internet web site and outreach program to serve as a comprehensive portal for foster care youth in Washington state to obtain information regarding higher education including, but not necessarily limited to:

(a) Academic, social, family, financial, and logistical information important to successful postsecondary educational success;

(b) How and when to obtain and complete college applications;

(c) What college placement tests, if any, are generally required for admission to college and when and how to register for such tests;

(d) How and when to obtain and complete a federal free application for federal student aid (FAFSA); and

(e) Detailed sources of financial aid likely available to eligible former foster care youth, including the financial aid provided by this chapter.

(2) The office shall determine whether to design, build, and operate such program and web site directly or to use, support, and modify existing web sites created by government or nongovernmental entities for a similar purpose. [2011 1st sp.s. c 11 § 223; 2007 c 314 § 6.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Expiration date—2011 1st sp.s. c 11 §§ 220-225: See note following RCW 28B.117.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.117.060 Program of supplemental educational transition planning for youth in foster care—Contract with nongovernmental entity. *(Effective July 1, 2012, until June 30, 2013.)* (1) To the extent funds are appropriated for this purpose, the department of social and health services, with input from the state board for community and technical colleges, the office, and institutions of higher education, shall contract with at least one nongovernmental entity through a request for proposals process to develop, implement, and administer a program of supplemental educational transition planning for youth in foster care in Washington state.

(2) The nongovernmental entity or entities chosen by the department shall have demonstrated success in working with foster care youth and assisting foster care youth in successfully making the transition from foster care to independent adulthood.

(3) The selected nongovernmental entity or entities shall provide supplemental educational transition planning to foster care youth in Washington state beginning at age fourteen and then at least every six months thereafter. The supplemental transition planning shall include:

(a) Comprehensive information regarding postsecondary educational opportunities including, but not limited to, sources of financial aid, institutional characteristics and record of support for former foster care youth, transportation, housing, and other logistical considerations;

(b) How and when to apply to postsecondary educational programs;

(c) What precollege tests, if any, the particular foster care youth should take based on his or her postsecondary plans and when to take the tests;

(d) What courses to take to prepare the particular foster care youth to succeed at his or her postsecondary plans;

(e) Social, community, educational, logistical, and other issues that frequently impact college students and their success rates; and

(f) Which web sites, nongovernmental entities, public agencies, and other foster care youth support providers specialize in which services.

(4) The selected nongovernmental entity or entities shall work directly with the school counselors at the foster care youths' high schools to ensure that a consistent and complete transition plan has been prepared for each foster care youth who emancipates out of the foster care system in Washington state. [2011 1st sp.s. c 11 § 224; 2007 c 314 § 7.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Expiration date—2011 1st sp.s. c 11 §§ 220-225: See note following RCW 28B.117.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.117.070 Reports—Recommendations. *(Effective July 1, 2012, until June 30, 2013.)* (1) The office of student financial assistance shall report to appropriate committees of the legislature by January 15, 2008, on the status of program design and implementation. The report shall include a dis-

discussion of proposed scholarship and student support service approaches; an estimate of the number of students who will receive such services; baseline information on the extent to which former foster care youth who meet the eligibility criteria in RCW 28B.117.030 have enrolled and persisted in postsecondary education; and recommendations for any statutory changes needed to promote achievement of program objectives.

(2) The state board for community and technical colleges and the office of student financial assistance shall monitor and analyze the extent to which eligible young people are increasing their participation, persistence, and progress in postsecondary education, and shall jointly submit a report on their findings to appropriate committees of the legislature by December 1, 2009, and by December 1, 2011.

(3) The Washington state institute for public policy shall complete an evaluation of the passport to college promise pilot program and shall submit a report to appropriate committees of the legislature by December 1, 2012. The report shall estimate the impact of the program on eligible students' participation and success in postsecondary education, and shall include recommendations for program revision and improvement. [2011 1st sp.s. c 11 § 225; 2007 c 314 § 8.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Expiration date—2011 1st sp.s. c 11 §§ 220-225: See note following RCW 28B.117.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Chapter 28B.118 RCW

COLLEGE BOUND SCHOLARSHIP PROGRAM

Sections

28B.118.010	Program design. (<i>Effective July 1, 2012.</i>)
28B.118.020	Duties of the office of the superintendent of public instruction. (<i>Effective July 1, 2012.</i>)
28B.118.040	Duties of the office of student financial assistance. (<i>Effective July 1, 2012.</i>)
28B.118.050	Grants, gifts, bequests, and devises. (<i>Effective July 1, 2012.</i>)
28B.118.060	Rules. (<i>Effective July 1, 2012.</i>)
28B.118.075	Caseload estimate.

28B.118.010 Program design. (*Effective July 1, 2012.*) The office of student financial assistance shall design the Washington college bound scholarship program in accordance with this section.

(1) "Eligible students" are those students who qualify for free or reduced-price lunches. If a student qualifies in the seventh grade, the student remains eligible even if the student does not receive free or reduced-price lunches thereafter.

(2) Eligible students shall be notified of their eligibility for the Washington college bound scholarship program beginning in their seventh grade year. Students shall also be notified of the requirements for award of the scholarship.

(3) To be eligible for a Washington college bound scholarship, a student must sign a pledge during seventh or eighth grade that includes a commitment to graduate from high school with at least a C average and with no felony convictions. Students who were in the eighth grade during the 2007-08 school year may sign the pledge during the 2008-09 school year. The pledge must be witnessed by a parent or guardian and forwarded to the office of student financial

assistance by mail or electronically, as indicated on the pledge form.

(4)(a) Scholarships shall be awarded to eligible students graduating from public high schools, approved private high schools under chapter 28A.195 RCW, or who received home-based instruction under chapter 28A.200 RCW.

(b) To receive the Washington college bound scholarship, a student must graduate with at least a "C" average from a public high school or an approved private high school under chapter 28A.195 RCW in Washington or have received home-based instruction under chapter 28A.200 RCW, must have no felony convictions, and must be a resident student as defined in RCW 28B.15.012(2) (a) through (d).

(5) A student's family income will be assessed upon graduation before awarding the scholarship.

(6) If at graduation from high school the student's family income does not exceed sixty-five percent of the state median family income, scholarship award amounts shall be as provided in this section.

(a) For students attending two or four-year institutions of higher education as defined in RCW 28B.10.016, the value of the award shall be (i) the difference between the student's tuition and required fees, less the value of any state-funded grant, scholarship, or waiver assistance the student receives; (ii) plus five hundred dollars for books and materials.

(b) For students attending private four-year institutions of higher education in Washington, the award amount shall be the representative average of awards granted to students in public research universities in Washington.

(c) For students attending private vocational schools in Washington, the award amount shall be the representative average of awards granted to students in public community and technical colleges in Washington.

(7) Recipients may receive no more than four full-time years' worth of scholarship awards.

(8) Institutions of higher education shall award the student all need-based and merit-based financial aid for which the student would otherwise qualify. The Washington college bound scholarship is intended to replace unmet need, loans, and, at the student's option, work-study award before any other grants or scholarships are reduced.

(9) The first scholarships shall be awarded to students graduating in 2012.

(10) The state of Washington retains legal ownership of tuition units awarded as scholarships under this chapter until the tuition units are redeemed. These tuition units shall remain separately held from any tuition units owned under chapter 28B.95 RCW by a Washington college bound scholarship recipient.

(11) The scholarship award must be used within five years of receipt. Any unused scholarship tuition units revert to the Washington college bound scholarship account.

(12) Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the scholarship tuition units shall revert to the Washington college bound scholarship account. [2011 1st sp.s. c 11 § 226; 2008 c 321 § 9; 2007 c 405 § 2.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—2008 c 321: See note following RCW 28A.655.061.

28B.118.020 Duties of the office of the superintendent of public instruction. (*Effective July 1, 2012.*) The office of the superintendent of public instruction shall:

(1) Notify elementary, middle, and junior high schools about the Washington college bound scholarship program using methods in place for communicating with schools and school districts; and

(2) Work with the office of student financial assistance to develop application collection and student tracking procedures. [2011 1st sp.s. c 11 § 227; 2007 c 405 § 3.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.118.040 Duties of the office of student financial assistance. (*Effective July 1, 2012.*) The office of student financial assistance shall:

(1) With the assistance of the office of the superintendent of public instruction, implement and administer the Washington college bound scholarship program;

(2) Develop and distribute, to all schools with students enrolled in grade seven or eight, a pledge form that can be completed and returned electronically or by mail by the student or the school to the office of student financial assistance;

(3) Develop and implement a student application, selection, and notification process for scholarships;

(4) Track scholarship recipients to ensure continued eligibility and determine student compliance for awarding of scholarships;

(5) Subject to appropriation, deposit funds into the state educational trust fund;

(6) Purchase tuition units under the advanced college tuition payment program in chapter 28B.95 RCW to be owned and held in trust by the *board, for the purpose of scholarship awards as provided for in this section; and

(7) Distribute scholarship funds, in the form of tuition units purchased under the advanced college tuition payment program in chapter 28B.95 RCW or through direct payments from the state educational trust fund, to institutions of higher education on behalf of scholarship recipients identified by the office, as long as recipients maintain satisfactory academic progress. [2011 1st sp.s. c 11 § 228; 2007 c 405 § 5.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012. The office of student financial assistance replaced the higher education coordinating board for higher education financial aid responsibilities pursuant to 2011 1st sp.s. c 11 § 102, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.118.050 Grants, gifts, bequests, and devises. (*Effective July 1, 2012.*) The office of student financial assistance may accept grants, gifts, bequests, and devises of real and personal property from any source for the purpose of granting financial aid in addition to that funded by the state. [2011 1st sp.s. c 11 § 229; 2007 c 405 § 6.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.118.060 Rules. (*Effective July 1, 2012.*) The office of student financial assistance may adopt rules to implement this chapter. [2011 1st sp.s. c 11 § 230; 2007 c 405 § 7.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.118.075 Caseload estimate. The caseload forecast council shall estimate the anticipated caseload of the Washington college bound scholarship program and shall submit this forecast as specified in RCW 43.88C.020. [2011 c 304 § 1.]

Chapter 28B.119 RCW WASHINGTON PROMISE SCHOLARSHIP PROGRAM

Sections

28B.119.010	Program design—Parameters. (<i>Effective July 1, 2012.</i>)
28B.119.020	Implementation and administration. (<i>Effective July 1, 2012.</i>)
28B.119.030	Funding for state need grant program not impaired. (<i>Effective July 1, 2012.</i>)
28B.119.050	Washington promise scholarship account. (<i>Effective July 1, 2012.</i>)

28B.119.010 Program design—Parameters. (*Effective July 1, 2012.*) The office of student financial assistance shall design the Washington promise scholarship program based on the following parameters:

(1) Scholarships shall be awarded to students graduating from public and approved private high schools under chapter 28A.195 RCW, students participating in home-based instruction as provided in chapter 28A.200 RCW, and persons twenty-one years of age or younger receiving a GED certificate, who meet both an academic and a financial eligibility criteria.

(a) Academic eligibility criteria shall be defined as follows:

(i) Beginning with the graduating class of 2002, students graduating from public and approved private high schools under chapter 28A.195 RCW must be in the top fifteen percent of their graduating class, as identified by each respective high school at the completion of the first term of the student's senior year; or

(ii) Students graduating from public high schools, approved private high schools under chapter 28A.195 RCW, students participating in home-based instruction as provided in chapter 28A.200 RCW, and persons twenty-one years of age or younger receiving a GED certificate, must equal or exceed a cumulative scholastic assessment test I score of twelve hundred on their first attempt or must equal or exceed a composite American college test score of twenty-seven on their first attempt.

(b) To meet the financial eligibility criteria, a student's family income shall not exceed one hundred thirty-five percent of the state median family income adjusted for family size, as determined by the office of student financial assistance for each graduating class. Students not meeting the eligibility requirements for the first year of scholarship benefits may reapply for the second year of benefits, but must still

meet the income standard set by the office for the student's graduating class.

(2) Promise scholarships are not intended to supplant any grant, scholarship, or tax program related to postsecondary education. If the office of student financial assistance finds that promise scholarships supplant or reduce any grant, scholarship, or tax program for categories of students, then the office shall adjust the financial eligibility criteria or the amount of scholarship to the level necessary to avoid supplanting.

(3) Within available funds, each qualifying student shall receive two consecutive annual awards, the value of each not to exceed the full-time annual resident tuition rates charged by Washington's community colleges. The office of student financial assistance shall award scholarships to as many students as possible from among those qualifying under this section.

(4) By October 15th of each year, the office of student financial assistance shall determine the award amount of the scholarships, after taking into consideration the availability of funds.

(5) The scholarships may only be used for undergraduate coursework at accredited institutions of higher education in the state of Washington.

(6) The scholarships may be used for undergraduate coursework at Oregon institutions of higher education that are part of the border county higher education opportunity project in RCW 28B.76.685 when those institutions offer programs not available at accredited institutions of higher education in Washington state.

(7) The scholarships may be used for college-related expenses, including but not limited to, tuition, room and board, books, and materials.

(8) The scholarships may not be awarded to any student who is pursuing a degree in theology.

(9) The office of student financial assistance may establish satisfactory progress standards for the continued receipt of the promise scholarship.

(10) The office of student financial assistance shall establish the time frame within which the student must use the scholarship. [2011 1st sp.s. c 11 § 231; 2004 c 275 § 60; 2003 c 233 § 5; 2002 c 204 § 2.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.119.020 Implementation and administration. (*Effective July 1, 2012.*) The office of student financial assistance, with the assistance of the office of the superintendent of public instruction, shall implement and administer the Washington promise scholarship program described in RCW 28B.119.010 as follows:

(1) The first scholarships shall be awarded to eligible students enrolling in postsecondary education in the 2002-03 academic year.

(2) The office of the superintendent of public instruction shall provide information to the office of student financial assistance that is necessary for implementation of the program. The office of student financial assistance and the

office of the superintendent of public instruction shall jointly establish a timeline and procedures necessary for accurate and timely data reporting.

(a) For students meeting the academic eligibility criteria as provided in RCW 28B.119.010(1)(a), the office of the superintendent of public instruction shall provide the office of student financial assistance with student names, addresses, birth dates, and unique numeric identifiers.

(b) Public and approved private high schools under chapter 28A.195 RCW shall provide requested information necessary for implementation of the program to the office of the superintendent of public instruction within the established timeline.

(c) All student data is confidential and may be used solely for the purposes of providing scholarships to eligible students.

(3) The office of student financial assistance may adopt rules to implement this chapter. [2011 1st sp.s. c 11 § 232; 2002 c 204 § 3.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.119.030 Funding for state need grant program not impaired. (*Effective July 1, 2012.*) The Washington promise scholarship program shall not be funded at the expense of the state need grant program as defined in chapter 28B.92 RCW. In administering the state need grant and promise scholarship programs, the office of student financial assistance shall first ensure that eligibility for state need grant recipients is at least fifty-five percent of state median family income. [2011 1st sp.s. c 11 § 233; 2004 c 275 § 71; 2002 c 204 § 4.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

28B.119.050 Washington promise scholarship account. (*Effective July 1, 2012.*) (1) The Washington promise scholarship account is created in the custody of the state treasurer. The account shall be a nontreasury account retaining its interest earnings in accordance with RCW 43.79A.040.

(2) The office of student financial assistance shall deposit in the account all money received for the program. The account shall be self-sustaining and consist of funds appropriated by the legislature for the Washington promise scholarship program, private contributions to the program, and refunds of Washington promise scholarships.

(3) Expenditures from the account shall be used for scholarships to eligible students.

(4) With the exception of the operating costs associated with the management of the account by the treasurer's office as authorized in chapter 43.79A RCW, the account shall be credited with all investment income earned by the account.

(5) Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW.

(6) Disbursements from the account shall be made only on the authorization of the office of student financial assistance. [2011 1st sp.s. c 11 § 234; 2002 c 204 § 6.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Chapter 28B.120 RCW

WASHINGTON FUND FOR INNOVATION AND QUALITY IN HIGHER EDUCATION PROGRAM

Sections

28B.120.020 Program administration—Higher education coordinating board. (*Effective July 1, 2012.*)

28B.120.020 Program administration—Higher education coordinating board. (*Effective July 1, 2012.*) The *higher education coordinating board shall have the following powers and duties in administering the program for those proposals in which a four-year institution of higher education is named as the lead institution and fiscal agent:

- (1) To adopt rules necessary to carry out the program;
- (2) To award grants no later than September 1st in those years when funding is available by June 30th;
- (3) To establish each biennium specific guidelines for submitting grant proposals consistent with RCW 28B.120.005 and consistent with the strategic master plan for higher education, the system design plan, the overall goals of the program and the guidelines established by the state board for community and technical colleges under RCW 28B.120.025.

After June 30, 2001, and each biennium thereafter, the *board shall determine funding priorities for proposals for the biennium in consultation with the legislature, the office of the superintendent of public instruction, the state board for community and technical colleges, the workforce training and education coordinating board, higher education institutions, educational associations, and business and community groups consistent with statewide needs;

- (4) To solicit grant proposals and provide information to the institutions of higher education about the program; and
- (5) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants awarded by the office of financial management. [2011 1st sp.s. c 11 § 235; 2010 c 245 § 8; 1999 c 169 § 3; 1996 c 41 § 2; 1991 c 98 § 3.]

***Reviser's note:** The higher education coordinating board ("board") was abolished by 2011 1st sp.s. c 11 § 301, effective July 1, 2012.

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Expand on demand—System design plan endorsed—2010 c 245: See note following RCW 28B.50.020.

Chapter 28B.122 RCW

AEROSPACE TRAINING STUDENT LOAN PROGRAM

Sections

28B.122.010 Definitions.
28B.122.020 Program established.

28B.122.030 Program eligibility—Student eligibility.
28B.122.040 Awards.
28B.122.050 Aerospace training student loan account.
28B.122.060 Annual report.

28B.122.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Aerospace training or educational program" means a course in the aerospace industry offered either by the Washington aerospace training and research center or the Spokane aerospace technology center.

(2) "Board" means the higher education coordinating board.

(3) "Eligible student" means a student who is registered for an aerospace training or educational program, is making satisfactory progress as defined by the program, and has a declared intention to work in the aerospace industry in the state of Washington.

(4) "Participant" means an eligible student who has received an aerospace training student loan.

(5) "Student loan" means a loan that is approved by the board and awarded to an eligible student. [2011 c 8 § 1.]

28B.122.020 Program established. (1) The aerospace training student loan program is established.

(2) The program shall be designed in consultation with representatives of aerospace employers, aerospace workers, and aerospace training or educational programs.

(3) The program shall be administered by the board. In administering the program, the board has the following powers and duties:

- (a) To screen and select, in coordination with representatives of aerospace training or educational programs, eligible students to receive an aerospace training student loan;
- (b) To consider an eligible student's financial inability to meet the total cost of the aerospace training or educational program in the selection process;
- (c) To issue low-interest student loans;
- (d) To establish an annual loan limit equal to the cost of attendance minus any other financial aid received;
- (e) To define the terms of repayment, including applicable interest rates, fees, and deferments;
- (f) To collect and manage repayments from students who do not meet their obligations under this chapter;
- (g) To solicit and accept grants and donations from public and private sources for the program; and
- (h) To adopt necessary rules. [2011 c 8 § 2.]

28B.122.030 Program eligibility—Student eligibility.

(1) To remain an aerospace training or educational program in which a participant may be registered, the program must have an advisory committee that includes at least one member representing aerospace employers and at least one member from organized labor representing aerospace workers.

(2) To remain an eligible student and receive continuing disbursements under the program, a participant must be considered by the aerospace training or educational program to be making satisfactory progress. [2011 c 8 § 3.]

28B.122.040 Awards. The board may award aerospace training student loans to eligible students from the funds available in the aerospace training student loan account for this program. The amount of the student loan awarded an individual may not exceed tuition and fees for the program of study. [2011 c 8 § 4.]

28B.122.050 Aerospace training student loan account. (1) The aerospace training student loan account is created in the custody of the state treasurer. No appropriation is required for expenditures of funds from the account for student loans. An appropriation is required for expenditures of funds from the account for costs associated with program administration by the board. The account is not subject to allotment procedures under chapter 43.88 RCW.

(2) The board shall deposit into the account all moneys received for the program. The account shall be self-sustaining and consist of moneys received for the program by the board, and receipts from participant repayments, including principal and interest.

(3) Expenditures from the account may be used solely for student loans to participants in the program established by this chapter and costs associated with program administration by the board.

(4) Disbursements from the account may be made only on the authorization of the board. [2011 c 8 § 5.]

28B.122.060 Annual report. (1) The board, in collaboration with aerospace training or educational programs, shall submit an annual report regarding the aerospace training student loan program to the governor and to the appropriate committees of the legislature.

(2) The annual report shall describe the design and implementation of the aerospace training student loan program, and shall include the following:

- (a) The number of applicants for loans;
- (b) The number of participants in the loan program;
- (c) The number of participants in the loan program who complete an aerospace training or educational program;
- (d) The number of participants in the loan program who are placed in employment;
- (e) The nature of that employment, including: (i) The type of job; (ii) whether the job is full-time, part-time, or temporary; (iii) whether the job pays annual wages that are: (A) Less than thirty thousand dollars; (B) thirty thousand dollars or greater, but less than sixty thousand dollars; or (C) sixty thousand dollars or more; and
- (f) Demographic profiles of applicants for loans and participants in the loan programs.

(3) The annual report shall be submitted by December 1st of each year after July 22, 2011. [2011 c 8 § 6.]

Chapter 28B.133 RCW

GAINING INDEPENDENCE FOR STUDENTS WITH DEPENDENTS PROGRAM

Sections

- 28B.133.030 Students with dependents grant account. (*Effective January 1, 2012, until July 1, 2012.*)
- 28B.133.030 Students with dependents grant account. (*Effective July 1, 2012.*)

28B.133.040 Program administration. (*Effective July 1, 2012.*)

28B.133.050 Use of grants. (*Effective July 1, 2012.*)

28B.133.030 Students with dependents grant account. (*Effective January 1, 2012, until July 1, 2012.*)

(1) The students with dependents grant account is created in the custody of the state treasurer. All receipts from the program shall be deposited into the account. Only the higher education coordinating board, or its designee, may authorize expenditures from the account. Disbursements from the account are exempt from appropriations and the allotment procedures under chapter 43.88 RCW.

(2) The board may solicit and receive gifts, grants, or endowments from private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the educational assistance grant program. The executive director, or the executive director's designee, may spend gifts, grants, or endowments or income from the private sources according to their terms unless the receipt of the gifts, grants, or endowments violates RCW 42.17A.560.

(3) The earnings on the account shall be used solely for the purposes in RCW 28B.133.010, except when the terms of a conditional gift of private moneys in the account require that a portion of earnings on such moneys be reinvested in the account. [2011 c 60 § 12; 2003 c 19 § 4.]

Effective date—2011 c 60: See RCW 42.17A.919.

28B.133.030 Students with dependents grant account. (*Effective July 1, 2012.*)

(1) The students with dependents grant account is created in the custody of the state treasurer. All receipts from the program shall be deposited into the account. Only the office of student financial assistance, or its designee, may authorize expenditures from the account. Disbursements from the account are exempt from appropriations and the allotment procedures under chapter 43.88 RCW.

(2) The office may solicit and receive gifts, grants, or endowments from private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the educational assistance grant program. The director, or the director's designee, may spend gifts, grants, or endowments or income from the private sources according to their terms unless the receipt of the gifts, grants, or endowments violates RCW 42.17A.560.

(3) The earnings on the account shall be used solely for the purposes in RCW 28B.133.010, except when the terms of a conditional gift of private moneys in the account require that a portion of earnings on such moneys be reinvested in the account. [2011 1st sp.s. c 11 § 236; 2011 c 60 § 12; 2003 c 19 § 4.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—2011 c 60: See RCW 42.17A.919.

28B.133.040 Program administration. (*Effective July 1, 2012.*) The office of student financial assistance shall develop and administer the educational assistance grant program for students with dependents. In administering the program, once the balance in the students with dependents grant

account is five hundred thousand dollars, the office's powers and duties shall include but not be limited to:

- (1) Adopting necessary rules and guidelines;
- (2) Publicizing the program;
- (3) Accepting and depositing donations into the grant account established in RCW 28B.133.030; and
- (4) Soliciting and accepting grants and donations from private sources for the program. [2011 1st sp.s. c 11 § 237; 2003 c 19 § 5.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

28B.133.050 Use of grants. (Effective July 1, 2012.)

The educational assistance grant program for students with dependents grants may be used by eligible participants to attend any public or private college or university in the state of Washington as defined in RCW 28B.92.030. Each participating student may receive an amount to be determined by the office of student financial assistance, with a minimum amount of one thousand dollars per academic year, not to exceed the student's documented financial need for the course of study as determined by the institution.

Educational assistance grants for students with dependents are not intended to supplant any grant scholarship or tax program related to postsecondary education. If the office of student financial assistance finds that the educational assistance grants for students with dependents supplant or reduce any grant, scholarship, or tax program for categories of students, then the office shall adjust the financial eligibility criteria or the amount of the grant to the level necessary to avoid supplanting. [2011 1st sp.s. c 11 § 238; 2004 c 275 § 74; 2003 c 19 § 6.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Part headings not law—2004 c 275: See note following RCW 28B.76.030.

**Chapter 28B.135 RCW
CHILD CARE FOR
HIGHER EDUCATION STUDENTS**

Sections

- 28B.135.010 Four-year student child care in higher education account—Program established. *(Effective July 1, 2012.)*
- 28B.135.030 Program administration—Four-year institutions of higher education—Rules—Reports. *(Effective July 1, 2012.)*
- 28B.135.040 Four-year student child care in higher education account. *(Effective July 1, 2012.)*

28B.135.010 Four-year student child care in higher education account—Program established. (Effective July 1, 2012.) The four-year student child care in higher education account is established. The office of student financial assistance shall administer the program for the four-year institutions of higher education. Through this program the office shall award either competitive or matching child care grants to state institutions of higher education to encourage programs to address the need for high quality, accessible, and affordable child care for students at higher education institutions. The grants shall be used exclusively for the provision

of quality child care services for students at institutions of higher education. The university or college administration and student government association, or its equivalent, of each institution receiving the award may contribute financial support in an amount equal to or greater than the child care grant received by the institution. [2011 1st sp.s. c 11 § 239; 2010 1st sp.s. c 9 § 5; 2008 c 162 § 2; 1999 c 375 § 1.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—2010 1st sp.s. c 9: See note following RCW 43.105.805.

Intent—2008 c 162: "It is the intent of the legislature to improve access to higher education for all residents and ensure that students have the necessary resources and support services to attain their educational goals while keeping families strong. For many students, the lack of affordable, accessible, quality child care on or in close proximity to colleges and universities is a barrier to completion of their higher education goals. Further, it is the intent of the legislature to adopt policies that, to the extent possible, leverage existing resources and maximize educational outcomes by supporting affordable, accessible, and quality child care programs." [2008 c 162 § 1.]

28B.135.030 Program administration—Four-year institutions of higher education—Rules—Reports. (Effective July 1, 2012.) The office of student financial assistance shall have the following powers and duties in administering the program for the four-year institutions of higher education:

- (1) To adopt rules necessary to carry out the program;
- (2) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committees may receive input from parents, educators, and other experts in the field of early childhood education for this purpose;
- (3) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program. The guidelines shall be consistent with the following desired outcomes of increasing access to quality child care for students, providing affordable child care alternatives for students, creating a partnership between university or college administrations, university or college foundations, and student government associations, or their equivalents;
- (4) To proportionally distribute the amount of money available in the trust fund based on the financial support for child care received by the student government associations or their equivalents. Student government associations may solicit funds from private organizations and targeted fund-raising campaigns as part of their financial support for child care;

(5) To solicit grant proposals and provide information to the institutions of higher education about the program; [and]

(6) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants; and[.] [2011 1st sp.s. c 11 § 240; 2008 c 162 § 3; 2005 c 490 § 8; 1999 c 375 § 3.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Intent—2008 c 162: See note following RCW 28B.135.010.

Effective date—2005 c 490: See note following RCW 43.215.540.

28B.135.040 Four-year student child care in higher education account. (*Effective July 1, 2012.*) The four-year student child care in higher education account is established in the custody of the state treasurer. Moneys in the account may be spent only for the purposes of RCW 28B.135.010. Disbursements from the account shall be on the authorization of the office of student financial assistance. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for disbursements. [2011 1st sp.s. c 11 § 241; 2010 1st sp.s. c 9 § 4; 1999 c 375 § 4.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Effective date—2010 1st sp.s. c 9: See note following RCW 43.105.805.

Chapter 28B.145 RCW OPPORTUNITY SCHOLARSHIP ACT

Sections

28B.145.005	Finding—Intent.
28B.145.010	Definitions.
28B.145.020	Opportunity scholarship board.
28B.145.030	Program administrator—Duties—Scholarship account—Endowment account.
28B.145.040	Opportunity scholarship program.
28B.145.050	Opportunity scholarship match transfer account.
28B.145.060	Opportunity expansion program—Generally—Reports.
28B.145.070	Reports—Review for legislative action.
28B.145.080	Evaluation of opportunity scholarship and opportunity expansion programs by joint legislative audit and review committee.
28B.145.900	Short title.
28B.145.901	Effective date—2011 1st sp.s. c 13.

28B.145.005 Finding—Intent. The legislature finds that, despite increases in degree production, there remain acute shortages in high employer demand programs of study, particularly in the science, technology, engineering, and mathematics (STEM) and health care fields of study. According to the workforce training and education coordinating board, seventeen percent of Washington businesses had difficulty finding job applicants in 2010. Eleven thousand employers did not fill a vacancy because they lacked qualified job applicants. Fifty-nine percent of projected job openings in Washington state from now until 2017 will require some form of postsecondary education and training.

It is the intent of the legislature to provide jobs and opportunity by making Washington the place where the world's most productive companies find the world's most talented people. The legislature intends to accomplish this through the creation of the opportunity scholarship and the opportunity expansion programs to help mitigate the impact of tuition increases, increase the number of baccalaureate degrees in high employer demand and other programs, and invest in programs and students to meet market demands for a knowledge-based economy while filling middle-income jobs with a sufficient supply of skilled workers. [2011 1st sp.s. c 13 § 1.]

28B.145.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

[2011 RCW Supp—page 608]

(1) "Board" means the higher education coordinating board or its successor.

(2) "Eligible education programs" means high employer demand and other programs of study as determined by the opportunity scholarship board.

(3) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses as determined by the program administrator in consultation with the board and the state board for community and technical colleges.

(4) "Eligible student" means a resident student who received their high school diploma or GED in Washington and who:

(a)(i) Has been accepted at a four-year institution of higher education into an eligible education program leading to a baccalaureate degree; or

(ii) Will attend a two-year institution of higher education and intends to transfer to an eligible education program at a four-year institution of higher education;

(b) Declares an intention to obtain a baccalaureate degree; and

(c) Has a family income at or below one hundred twenty-five percent of the state median family income at the time the student applies for an opportunity scholarship.

(5) "High employer demand program of study" has the same meaning as provided in RCW 28B.50.030.

(6) "Participant" means an eligible student who has received a scholarship under the opportunity scholarship program.

(7) "Program administrator" means a college scholarship organization that is a private nonprofit corporation registered under Title 24 RCW and qualified as a tax-exempt entity under section 501(c)(3) of the federal internal revenue code, with expertise in managing scholarships and college advising.

(8) "Resident student" has the same meaning as provided in RCW 28B.15.012. [2011 1st sp.s. c 13 § 2.]

28B.145.020 Opportunity scholarship board. (1) The opportunity scholarship board is created. The opportunity scholarship board consists of seven members:

(a) Three members appointed by the governor. For two of the three appointments, the governor shall consider names from a list provided by the president of the senate and the speaker of the house of representatives; and

(b) Four foundation or business and industry representatives appointed by the governor from among the state's most productive industries such as aerospace, manufacturing, health sciences, information technology, and others. The foundation or business and industry representatives shall be selected from among nominations provided by the private sector donors to the opportunity scholarship and opportunity expansion programs. However, the governor may request, and the private sector donors shall provide, an additional list or lists from which the governor shall select these representatives.

(2) Board members shall hold their offices for a term of four years from the first day of September and until their successors are appointed. No more than the terms of two mem-

bers may expire simultaneously on the last day of August in any one year.

(3) The members of the opportunity scholarship board shall elect one of the business and industry representatives to serve as chair.

(4) Five members of the board constitute a quorum for the transaction of business. In case of a vacancy, or when an appointment is made after the date of expiration of the term, the governor or the president of the senate or the speaker of the house of representatives, depending upon which made the initial appointment to that position, shall fill the vacancy for the remainder of the term of the board member whose office has become vacant or expired.

(5) The opportunity scholarship board shall be staffed by the program administrator.

(6) The purpose of the opportunity scholarship board is to provide oversight and guidance for the opportunity expansion and the opportunity scholarship programs in light of established legislative priorities and to fulfill the duties and responsibilities under this chapter, including but not limited to determining eligible education programs for purposes of the opportunity scholarship program. Duties, exercised jointly with the program administrator, include soliciting funds and setting annual fund-raising goals.

(7) The opportunity scholarship board may report to the governor and the appropriate committees of the legislature with recommendations as to:

(a) Whether some or all of the scholarships should be changed to conditional scholarships that must be repaid in the event the participant does not complete the eligible education program; and

(b) A source or sources of funds for the opportunity expansion program in addition to the voluntary contributions of the high technology research and development tax credit under RCW 82.32.800. [2011 1st sp.s. c 13 § 3.]

28B.145.030 Program administrator—Duties—Scholarship account—Endowment account. (1) The program administrator, under contract with the board, shall staff the opportunity scholarship board and shall have the duties and responsibilities provided in this chapter, including but not limited to publicizing the program, selecting participants for the opportunity scholarship award, distributing opportunity scholarship awards, and achieving the maximum possible rate of return on investment of the accounts in subsection (2) of this section, while ensuring transparency in the investment decisions and processes. Duties, exercised jointly with the opportunity scholarship board, include soliciting funds and setting annual fund-raising goals. The program administrator shall be paid an administrative fee as determined by the opportunity scholarship board.

(2) With respect to the opportunity scholarship program, the program administrator shall:

(a) Establish and manage two separate accounts into which to receive grants and contributions from private sources as well as state matching funds, and from which to disburse scholarship funds to participants;

(b) Solicit and accept grants and contributions from private sources, via direct payment, pledge agreement, or escrow account, of private sources for deposit into one or

both of the two accounts created in this subsection (2)(b) in accordance with this subsection (2)(b):

(i) The "scholarship account," whose principal may be invaded, and from which scholarships must be disbursed beginning no later than December 1, 2011, if, by that date, state matching funds in the amount of five million dollars or more have been received. Thereafter, scholarships shall be disbursed on an annual basis beginning no later than May 1, 2012, and every May 1st thereafter;

(ii) The "endowment account," from which scholarship moneys may be disbursed from earnings only in years when:

(A) The state match has been made into both the scholarship and the endowment account;

(B) The state appropriations for the state need grant under RCW 28B.92.010 meet or exceed state appropriations for the state need grant made in the 2011-2013 biennium, adjusted for inflation, and eligibility for state need grant recipients is at least seventy percent of state median family income; and

(C) The state has demonstrated progress toward the goal of total per-student funding levels, from state appropriations plus tuition and fees, of at least the sixtieth percentile of total per-student funding at similar public institutions of higher education in the global challenge states, as defined, measured, and reported in RCW 28B.15.068. In any year in which the office of financial management reports that the state has not made progress toward this goal, no new scholarships may be awarded. In any year in which the office of financial management reports that the percentile of total per-student funding is less than the sixtieth percentile and at least five percent less than the prior year, pledges of future grants and contributions may, at the request of the donor, be released and grants and contributions already received refunded to the extent that opportunity scholarship awards already made can be fulfilled from the funds remaining in the endowment account; and

(iii) An amount equal to at least fifty percent of all grants and contributions must be deposited into the scholarship account until such time as twenty million dollars have been deposited into the account, after which time the private donors may designate whether their contributions must be deposited to the scholarship or the endowment account. The opportunity scholarship board and the program administrator must work to maximize private sector contributions to both the scholarship account and the endowment account, to maintain a robust scholarship program while simultaneously building the endowment, and to determine the division between the two accounts in the case of undesignated grants and contributions, taking into account the need for a long-term funding mechanism and the short-term needs of families and students in Washington. The first five million dollars in state match, as provided in RCW 28B.145.040, shall be deposited into the scholarship account and thereafter the state match shall be deposited into the two accounts in equal proportion to the private funds deposited in each account;

(c) Provide proof of receipt of grants and contributions from private sources to the board, identifying the amounts received by name of private source and date, and whether the amounts received were deposited into the scholarship or the endowment account;

(d) In consultation with the higher education coordinating board and the state board for community and technical colleges, make an assessment of the reasonable annual eligible expenses associated with eligible education programs identified by the opportunity scholarship board;

(e) Determine the dollar difference between tuition fees charged by institutions of higher education in the 2008-09 academic year and the academic year for which an opportunity scholarship is being distributed;

(f) Develop and implement an application, selection, and notification process for awarding opportunity scholarships;

(g) Determine the annual amount of the opportunity scholarship for each selected participant. The annual amount shall be at least one thousand dollars or the amount determined under (e) of this subsection, but may be increased on an income-based, sliding scale basis up to the amount necessary to cover all reasonable annual eligible expenses as assessed pursuant to (d) of this subsection, or to encourage participation in baccalaureate degree programs identified by the opportunity scholarship board;

(h) Distribute scholarship funds to selected participants. Once awarded, and to the extent funds are available for distribution, an opportunity scholarship shall be automatically renewed until the participant withdraws from or is no longer attending the program, completes the program, or has taken the credit or clock hour equivalent of one hundred twenty-five percent of the published length of time of the participant's program, whichever occurs first, and as long as the participant annually submits documentation of filing both a free application for federal student aid and for available federal education tax credits, including but not limited to the American opportunity tax credit; and

(i) Notify institutions of scholarship recipients who will attend their institutions and inform them of the terms of the students' eligibility.

(3) With respect to the opportunity expansion program, the program administrator shall:

(a) Assist the opportunity scholarship board in developing and implementing an application, selection, and notification process for making opportunity expansion awards; and

(b) Solicit and accept grants and contributions from private sources for opportunity expansion awards. [2011 1st sp.s. c 13 § 4.]

28B.145.040 Opportunity scholarship program. (1) The opportunity scholarship program is established.

(2) The purpose of this scholarship program is to provide scholarships that will help low and middle-income Washington residents earn baccalaureate degrees in high employer demand and other programs of study and encourage them to remain in the state to work. The program must be designed for both students starting at two-year institutions of higher education and intending to transfer to four-year institutions of higher education and students starting at four-year institutions of higher education.

(3) The opportunity scholarship board shall determine which programs of study, including but not limited to high employer demand programs, are eligible for purposes of the opportunity scholarship.

(4) The source of funds for the program shall be a combination of private grants and contributions and state match-

ing funds. A state match may be earned under this section for private contributions made on or after June 6, 2011. A state match, up to a maximum of fifty million dollars annually, shall be provided beginning the later of January 1, 2014, or January 1st next following the end of the fiscal year in which collections of state retail sales and use tax, state business and occupation tax, and state public utility tax exceed, by ten percent the amounts collected from these tax resources in the fiscal year that ended June 30, 2008, as determined by the department of revenue. [2011 1st sp.s. c 13 § 5.]

28B.145.050 Opportunity scholarship match transfer account. (1) The opportunity scholarship match transfer account is created in the custody of the state treasurer as a nonappropriated account to be used solely and exclusively for the opportunity scholarship program created in RCW 28B.145.040. The purpose of the account is to provide matching funds for the opportunity scholarship program.

(2) Revenues to the account shall consist of appropriations by the legislature into the account and any gifts, grants, or donations received by the director of the board for this purpose.

(3) No expenditures from the account may be made except upon receipt of proof, by the director of the board from the program administrator, of private contributions to the opportunity scholarship program. Expenditures, in the form of matching funds, may not exceed the total amount of private contributions.

(4) Only the director of the board or the director's designee may authorize expenditures from the opportunity scholarship match transfer account. Such authorization must be made as soon as practicable following receipt of proof as required under subsection (3) of this section. [2011 1st sp.s. c 13 § 6.]

28B.145.060 Opportunity expansion program—Generally—Reports. (1) The opportunity expansion program is established.

(2) The opportunity scholarship board shall select institutions of higher education to receive opportunity expansion awards. In so doing, the opportunity scholarship board must:

(a) Solicit, receive, and evaluate proposals from institutions of higher education that are designed to directly increase the number of baccalaureate degrees produced in high employer demand and other programs of study, and that include annual numerical targets for the number of such degrees, with a strong emphasis on serving students who received their high school diploma or GED in Washington or are adult Washington residents who are returning to school to gain a baccalaureate degree;

(b) Develop criteria for evaluating proposals and awarding funds to the proposals deemed most likely to increase the number of baccalaureate degrees and degrees produced in high employer demand and other programs of study;

(c) Give priority to proposals that include a partnership between public and private partnership entities that leverage additional private funds;

(d) Give priority to proposals that are innovative, efficient, and cost-effective, given the nature and cost of the particular program of study;

(e) Consult and operate in consultation with existing higher education stakeholders, including but not limited to: Faculty, labor, student organizations, and relevant higher education agencies; and

(f) Determine which proposals to improve and accelerate the production of baccalaureate degrees in high employer demand and other programs of study will receive opportunity expansion awards for the following state fiscal year, notify the state treasurer, and announce the awards.

(3) The state treasurer, at the direction of the opportunity scholarship board, must distribute the funds that have been awarded to the institutions of higher education from the opportunity expansion account.

(4) Institutions of higher education receiving awards under this section may not supplant existing general fund state revenues with opportunity expansion awards.

(5) Annually, the office of financial management shall report to the opportunity scholarship board, the governor, and the relevant committees of the legislature regarding the percentage of Washington households with incomes in the middle-income bracket or higher. For purposes of this section, "middle-income bracket" means household incomes between two hundred and five hundred percent of the 2010 federal poverty level, as determined by the United States department of health and human services for a family of four, adjusted annually for inflation.

(6) Annually, the higher education coordinating board must report to the opportunity scholarship board, the governor, and the relevant committees of the legislature regarding the increase in the number of degrees in high employer demand and other programs of study awarded by institutions of higher education over the average of the preceding ten academic years.

(7) In its comprehensive plan, the workforce training and education coordinating board shall include specific strategies to reach the goal of increasing the percentage of Washington households living in the middle-income bracket or higher, as calculated by the office of financial management and developed by the agency or education institution that will lead the strategy. [2011 1st sp.s. c 13 § 7.]

28B.145.070 Reports—Review for legislative action.

(1) By December 1, 2012, and annually each December 1st thereafter, the opportunity scholarship board, together with the program administrator, shall report to the board, the governor, and the appropriate committees of the legislature regarding the opportunity scholarship and opportunity expansion programs, including but not limited to:

(a) Which education programs the opportunity scholarship board determined were eligible for purposes of the opportunity scholarship;

(b) The number of applicants for the opportunity scholarship, disaggregated, to the extent possible, by race, ethnicity, gender, county of origin, age, and median family income;

(c) The number of participants in the opportunity scholarship program, disaggregated, to the extent possible, by race, ethnicity, gender, county of origin, age, and median family income;

(d) The number and amount of the scholarships actually awarded, and whether the scholarships were paid from the scholarship account or the endowment account;

(e) The institutions and eligible education programs in which opportunity scholarship participants enrolled, together with data regarding participants' completion and graduation;

(f) The total amount of private contributions and state match moneys received for the opportunity scholarship program, how the funds were distributed between the scholarship and endowment accounts, the interest or other earnings on the accounts, and the amount of any administrative fee paid to the program administrator; and

(g) Identification of the programs the opportunity scholarship board selected to receive opportunity expansion awards and the amount of such awards.

(2) In the next succeeding legislative session following receipt of a report required under subsection (1) of this section, the appropriate committees of the legislature shall review the report and consider whether any legislative action is necessary with respect to either the opportunity scholarship program or the opportunity expansion program, including but not limited to consideration of whether any legislative action is necessary with respect to the nature and level of focus on high employer demand fields and the number and amount of scholarships. [2011 1st sp.s. c 13 § 8.]

28B.145.080 Evaluation of opportunity scholarship and opportunity expansion programs by joint legislative audit and review committee.

(1) Beginning in 2018, the joint legislative audit and review committee shall evaluate the opportunity scholarship and opportunity expansion programs, and submit a report to the appropriate committees of the legislature by December 1, 2018. The committee's evaluation shall include, but not be limited to:

(a) The number and type of eligible education programs as determined by the opportunity scholarship board;

(b) The number of participants in the opportunity scholarship program in relation to the number of participants who completed a baccalaureate degree;

(c) The total cumulative number of students who received opportunity scholarships, and the total cumulative number of students who gained a baccalaureate degree after receiving an opportunity scholarship and the types of baccalaureate degrees awarded;

(d) The amount of private contributions to the opportunity scholarship program, annually and in total;

(e) The amount of state match moneys to the opportunity scholarship program, annually and in total;

(f) The amount of any administrative fees paid to the program administrator, annually and in total;

(g) The source and amount of funding, annually and cumulatively, for the opportunity expansion program;

(h) The number and type of proposals submitted by institutions for opportunity expansion awards, the number and type of proposals that received an award of opportunity expansion funds, and the amount of such awards;

(i) The total cumulative number of additional high employer demand degrees produced in Washington state due to the opportunity expansion program, including both the initial opportunity expansion awards and the subsequent inclusion in base funding; and

(j) Evidence that the existence of the opportunity scholarship and opportunity expansion programs have contributed to the achievement of the public policy objectives of helping

to mitigate the impact of tuition increases, increasing the number of baccalaureate degrees in high employer demand and other programs, and investing in programs and students to meet market demands for a knowledge-based economy while filling middle-income jobs with a sufficient supply of skilled workers.

(2) In the event that the joint legislative audit and review committee is charged with completing an evaluation of other aspects of degree production, funding, or other aspects of higher education in 2018, and to the extent that it is economical and feasible to do so, the committee shall combine the multiple evaluations and submit a single report. [2011 1st sp.s. c 13 § 9.]

28B.145.900 Short title. This chapter may be known and cited as the opportunity scholarship act. [2011 1st sp.s. c 13 § 11.]

28B.145.901 Effective date—2011 1st sp.s. c 13. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 6, 2011]. [2011 1st sp.s. c 13 § 13.]

Title 28C

VOCATIONAL EDUCATION

Chapters

- 28C.04** Vocational education.
- 28C.10** Private vocational schools.
- 28C.18** Workforce training and education.

Chapter 28C.04 RCW

VOCATIONAL EDUCATION

Sections

28C.04.535 Washington award for vocational excellence—Granted annually—Notice—Presentation.

28C.04.535 Washington award for vocational excellence—Granted annually—Notice—Presentation. Except for the 2011-12 and 2012-13 school years, the Washington award for vocational excellence shall be granted annually. The workforce training and education coordinating board shall notify the students receiving the award, their vocational instructors, local chambers of commerce, the legislators of their respective districts, and the governor, after final selections have been made. The workforce training and education coordinating board, in conjunction with the governor's office, shall prepare appropriate certificates to be presented to the selected students. Awards shall be presented in public ceremonies at times and places determined by the workforce training and education coordinating board in cooperation with the office of the governor. [2011 1st sp.s. c 50 § 930; 1995 1st sp.s. c 7 § 4; 1984 c 267 § 4.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Additional notes found at www.leg.wa.gov

Chapter 28C.10 RCW

PRIVATE VOCATIONAL SCHOOLS

Sections

28C.10.140 Violations—Criminal sanctions.

28C.10.140 Violations—Criminal sanctions. Any entity or any owner, officer, agent, or employee of such entity who wilfully violates RCW 28C.10.060 or 28C.10.090 is guilty of a gross misdemeanor and, upon conviction, shall be punished by a fine of not to exceed one thousand dollars or by imprisonment in the county jail for up to three hundred sixty-four days, or by both such fine and imprisonment.

Each day on which a violation occurs constitutes a separate violation. The criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the attorney general of this state. [2011 c 96 § 23; 1986 c 299 § 14.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Chapter 28C.18 RCW

WORKFORCE TRAINING AND EDUCATION

Sections

28C.18.166 Opportunity internship program—List of consortium graduates—Notifying office of student financial assistance of state need grant eligibility. (*Effective July 1, 2012.*)

Duty relative to opportunity scholarship program: RCW 28B.145.060.

28C.18.166 Opportunity internship program—List of consortium graduates—Notifying office of student financial assistance of state need grant eligibility. (*Effective July 1, 2012.*) On an annual basis, each opportunity internship consortium shall provide the board with a list of the opportunity internship graduates from the consortium. The board shall compile the lists from all consortia and shall notify the office of student financial assistance of the eligibility of each graduate on the lists to receive a state need grant under chapter 28B.92 RCW if the graduate enrolls in a post-secondary program of study within one year of high school graduation. [2011 1st sp.s. c 11 § 242; 2009 c 238 § 5.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Findings—Intent—2009 c 238: See note following RCW 28C.18.160.

Title 29A

ELECTIONS

Chapters

- 29A.04** General provisions.
- 29A.08** Voters and registration.
- 29A.12** Voting systems.
- 29A.16** Precincts.
- 29A.24** Filing for office.
- 29A.28** Vacancies.
- 29A.32** Voters' pamphlets.
- 29A.36** Ballots and other voting forms.
- 29A.40** Elections by mail.
- 29A.44** Polling place elections and poll workers.
- 29A.46** Disability access voting.

29A.48	Voting by mail.
29A.52	Primaries and elections.
29A.56	Special circumstances elections.
29A.60	Canvassing.
29A.64	Recounts.
29A.68	Contesting an election.
29A.76	Redistricting.
29A.84	Crimes and penalties.

Chapter 29A.04 RCW
GENERAL PROVISIONS

Sections

29A.04.008	Ballot and related terms.
29A.04.013	Canvassing.
29A.04.019	Counting center.
29A.04.031	Date of mailing.
29A.04.037	Disabled voter.
29A.04.049	Repealed.
29A.04.115	Repealed.
29A.04.128	Repealed.
29A.04.216	County auditor—Duties—Exceptions.
29A.04.220	County auditor—Public notice of availability of services.
29A.04.223	Vote by mail impacts on voters with disabilities—Mitigation—Advisory committee, plan.
29A.04.235	Election laws for county auditors.
29A.04.255	Electronic documents—Acceptance. <i>(Effective until January 1, 2012.)</i>
29A.04.255	Electronic documents—Acceptance. <i>(Effective January 1, 2012.)</i>
29A.04.310	Repealed. <i>(Effective January 1, 2012.)</i>
29A.04.311	Primaries. <i>(Effective January 1, 2012.)</i>
29A.04.321	State and local general elections—Statewide general election—Exceptions—Special county elections. <i>(Effective January 1, 2012.)</i>
29A.04.330	City, town, and district general and special elections—Exceptions. <i>(Effective January 1, 2012.)</i>
29A.04.470	Grant program—Advisory committee.
29A.04.540	Training of administrators.
29A.04.580	County auditor and review staff.
29A.04.611	Rules by secretary of state.

29A.04.008 Ballot and related terms. As used in this title:

- (1) "Ballot" means, as the context implies, either:
 - (a) The issues and offices to be voted upon in a jurisdiction or portion of a jurisdiction at a particular primary, general election, or special election;
 - (b) A facsimile of the contents of a particular ballot whether printed on a paper ballot or ballot card or as part of a voting machine or voting device;
 - (c) A physical or electronic record of the choices of an individual voter in a particular primary, general election, or special election; or
 - (d) The physical document on which the voter's choices are to be recorded;
- (2) "Paper ballot" means a piece of paper on which the ballot for a particular election or primary has been printed, on which a voter may record his or her choices for any candidate or for or against any measure, and that is to be tabulated manually;
- (3) "Ballot card" means any type of card or piece of paper of any size on which a voter may record his or her choices for any candidate and for or against any measure and that is to be tabulated on a vote tallying system;
- (4) "Sample ballot" means a printed facsimile of all the issues and offices on the ballot in a jurisdiction and is intended to give voters notice of the issues, offices, and can-

didates that are to be voted on at a particular primary, general election, or special election;

(5) "Provisional ballot" means a ballot issued to a voter who would otherwise be denied an opportunity to vote a regular ballot, for any reason authorized by the Help America Vote Act, including but not limited to the following:

(a) The voter's name does not appear in the list of registered voters for the county;

(b) There is an indication in the voter registration system that the voter has already voted in that primary, special election, or general election, but the voter wishes to vote again;

(c) There is a question on the part of the voter concerning the issues or candidates on which the voter is qualified to vote;

(d) Any other reason allowed by law;

(6) "Party ballot" means a primary election ballot specific to a particular major political party that lists all candidates for partisan office who affiliate with that same major political party, as well as the nonpartisan races and ballot measures to be voted on at that primary;

(7) "Nonpartisan ballot" means a primary election ballot that lists all nonpartisan races and ballot measures to be voted on at that primary. [2011 c 10 § 1; 2007 c 38 § 1; 2005 c 243 § 1; 2004 c 271 § 102.]

Notice to registered poll voters—Elections by mail—2011 c 10: "The county auditor of any county that maintained poll sites as of July 22, 2011, shall notify by mail each registered poll voter that all future primaries, special elections, and general elections will be conducted by mail." [2011 c 10 § 85.]

29A.04.013 Canvassing. "Canvassing" means the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of a primary or general election and includes the tabulation of any votes that were not previously tabulated. [2011 c 10 § 2; 2003 c 111 § 103; 1990 c 59 § 3. Formerly RCW 29.01.008.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—1990 c 59: "By this act the legislature intends to unify and simplify the laws and procedures governing filing for elective office, ballot layout, ballot format, voting equipment, and canvassing." [1990 c 59 § 1.]

Additional notes found at www.leg.wa.gov

29A.04.019 Counting center. "Counting center" means the facility or facilities designated by the county auditor to count and canvass ballots. [2011 c 10 § 3; 2003 c 111 § 104. Prior: 1999 c 158 § 1; 1990 c 59 § 4. Formerly RCW 29.01.042.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

29A.04.031 Date of mailing. For registered voters voting by mail, "date of mailing" means the date of the postal cancellation on the envelope in which the ballot is returned to the election official by whom it was issued. For all service and overseas voters, "date of mailing" means the date stated by the voter on the declaration. [2011 c 10 § 4; 2003 c 111 § 106; 1987 c 346 § 3. Formerly RCW 29.01.045.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.04.037 Disabled voter. "Disabled voter" means any registered voter who qualifies for special parking privileges under RCW 46.19.010, or who is defined as blind under RCW 74.18.020, or who qualifies to require assistance with voting under RCW 29A.40.160. [2011 c 10 § 5; 2010 c 161 § 1103; 2003 c 111 § 107. Prior: 1987 c 346 § 4. Formerly RCW 29.01.047.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—Intent—Legislation to reconcile chapter 161, Laws of 2010 and other amendments made during the 2010 legislative session—2010 c 161: See notes following RCW 46.04.013.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.04.049 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.04.115 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.04.128 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.04.216 County auditor—Duties—Exceptions. The county auditor of each county shall be ex officio the supervisor of all primaries and elections, general or special, and it shall be the county auditor's duty to provide places for holding such primaries and elections; to provide the supplies and materials necessary for the conduct of elections; and to publish and post notices of calling such primaries and elections in the manner provided by law. The notice of a primary held in an even-numbered year must indicate that the office of precinct committee officer will be on the ballot. The auditor shall also apportion to each city, town, or district, and to the state of Washington in the odd-numbered year, its share of the expense of such primaries and elections. This section does not apply to general or special elections for any city, town, or district that is not subject to RCW 29A.04.321 and 29A.04.330, but all such elections must be held and conducted at the time, in the manner, and by the officials (with such notice, requirements for filing for office, and certifications by local officers) as provided and required by the laws governing such elections. [2011 c 10 § 6; 2004 c 271 § 104.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.04.220 County auditor—Public notice of availability of services. The county auditor shall provide public notice of the availability of registration and voting aids, assistance to elderly and disabled persons, and procedures for voting calculated to reach elderly and disabled persons not later than public notice of the closing of registration for a primary or election. [2011 c 10 § 7; 2003 c 111 § 135; 1999 c 298 § 18; 1985 c 205 § 10. Formerly RCW 29.57.140.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Additional notes found at www.leg.wa.gov

29A.04.223 Vote by mail impacts on voters with disabilities—Mitigation—Advisory committee, plan. (1) The legislature finds that the elimination of polling places resulting from the transition to vote by mail creates barriers that restrict the ability of many voters with disabilities from achieving the independence and privacy in voting provided by the accessible voting devices required under the help America vote act. Counties must take appropriate steps to mitigate these impacts and to address the obligation to provide voters with disabilities an equal opportunity to vote independently and privately, to the extent that this can be achieved without incurring undue administrative and financial burden.

(2) Each county shall establish and maintain an advisory committee that includes persons with diverse disabilities and persons with expertise in providing accommodations for persons with disabilities. The committee shall assist election officials in developing a plan to identify and implement changes to improve the accessibility of elections for voters with disabilities. The plan shall include recommendations for the following:

(a) The number of voting centers that will be maintained in order to ensure that people with disabilities have reasonable access to accessible voting devices, and a written explanation for how the determination was made;

(b) The locations of ballot drop-off facilities, voting centers, and other election-related functions necessary to maximize accessibility to persons with disabilities;

(c) Outreach to voters with disabilities on the availability of disability accommodation, including in-person disability access voting;

(d) Transportation of voting devices to locations convenient for voters with disabilities in order to ensure reasonable access for voters with disabilities; and

(e) Implementation of the provisions of the help America vote act related to persons with disabilities.

Counties must update the plan at least annually. The election review staff of the secretary of state shall review and evaluate the plan in conformance with the review procedure identified in RCW 29A.04.570.

(3) Counties may form a joint advisory committee to develop the plan identified in subsection (2) of this section if no more than one of the participating counties has a population greater than seventy thousand. [2011 c 10 § 44; 2010 c 215 § 5; 2006 c 207 § 7. Formerly RCW 29A.46.260.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Findings—2010 c 215: See note following RCW 50.40.071.

29A.04.235 Election laws for county auditors. The secretary of state shall ensure that each county auditor is provided with the most recent version of the election laws of the state, as contained in this title. Where amendments have been enacted after the last compilation of the election laws, he or she shall ensure that each county auditor receives a copy of those amendments before the next primary or election. [2011 c 10 § 8; 2003 c 111 § 138; 1965 c 9 § 29.04.060. Prior: (i) 1907 c 209 § 16; RRS § 5193. (ii) 1889 p 413 § 34; RRS § 5299. Formerly RCW 29.04.060.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.04.255 Electronic documents—Acceptance. (*Effective until January 1, 2012.*) The secretary of state or a county auditor shall accept and file in his or her office electronic transmissions of the following documents:

- (1) Declarations of candidacy;
- (2) County canvass reports;
- (3) Voters' pamphlet statements;
- (4) Arguments for and against ballot measures that will appear in a voters' pamphlet;
- (5) Requests for recounts;
- (6) Certification of candidates and measures by the secretary of state;
- (7) Direction by the secretary of state for the conduct of a recount;
- (8) Requests for ballots;
- (9) Any other election related document authorized by rule adopted by the secretary of state under RCW 29A.04.611.

The acceptance by the secretary of state or the county auditor is conditional upon the document being filed in a timely manner, being legible, and otherwise satisfying the requirements of state law or rules with respect to form and content.

The secretary may by rule require that the original of any document, a copy of which is filed by electronic transmission under this section, also be filed by a deadline established by the secretary by rule. [2011 c 348 § 1; 2011 c 10 § 9; 2004 c 266 § 5; 2003 c 111 § 142; 1991 c 186 § 1. Formerly RCW 29.04.230.]

Reviser's note: This section was amended by 2011 c 10 § 9 and by 2011 c 348 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2004 c 266: See note following RCW 29A.04.575.

29A.04.255 Electronic documents—Acceptance. (*Effective January 1, 2012.*) The secretary of state or a county auditor shall accept and file in his or her office electronic transmissions of the following documents:

- (1) Declarations of candidacy;
- (2) County canvass reports;
- (3) Voters' pamphlet statements;
- (4) Arguments for and against ballot measures that will appear in a voters' pamphlet;
- (5) Requests for recounts;
- (6) Certification of candidates and measures by the secretary of state;
- (7) Direction by the secretary of state for the conduct of a recount;
- (8) Requests for ballots;
- (9) Any other election related document authorized by rule adopted by the secretary of state under RCW 29A.04.611.

The acceptance by the secretary of state or the county auditor is conditional upon the document being filed in a timely manner, being legible, and otherwise satisfying the requirements of state law or rules with respect to form and content.

The secretary may by rule require that the original of any document, a copy of which is filed by electronic transmission under this section, also be filed by a deadline established by the secretary by rule. [2011 c 349 § 1; 2011 c 348 § 1; 2011 c 10 § 9; 2004 c 266 § 5; 2003 c 111 § 142; 1991 c 186 § 1. Formerly RCW 29.04.230.]

Reviser's note: This section was amended by 2011 c 10 § 9, 2011 c 348 § 1, and by 2011 c 349 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 349: "Except for sections 10 through 12, 21, 27, 28, and 30 of this act, this act takes effect January 1, 2012." [2011 c 349 § 33.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2004 c 266: See note following RCW 29A.04.575.

29A.04.310 Repealed. (*Effective January 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.04.311 Primaries. (*Effective January 1, 2012.*) Primaries for general elections to be held in November, and the election of precinct committee officers, must be held on the first Tuesday of the preceding August. [2011 c 349 § 2; 2006 c 344 § 1; 2004 c 271 § 105.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Effective date—2006 c 344 §§ 1-16 and 18-40: "Sections 1 through 16 and 18 through 40 of this act take effect January 1, 2007." [2006 c 344 § 41.]

29A.04.321 State and local general elections—Statewide general election—Exceptions—Special county elections. (*Effective January 1, 2012.*) (1) All state, county, city, town, and district general elections for the election of federal, state, legislative, judicial, county, city, town, and district officers, and for the submission to the voters of the state, county, city, town, or district of any measure for their adoption and approval or rejection, shall be held on the first Tuesday after the first Monday of November, in the year in which they may be called. A statewide general election shall be held on the first Tuesday after the first Monday of November of each year. However, the statewide general election held in odd-numbered years shall be limited to (a) city, town, and district general elections as provided for in RCW 29A.04.330, or as otherwise provided by law; (b) the election of federal officers for the remainder of any unexpired terms in the membership of either branch of the Congress of the United States; (c) the election of state and county officers for the remainder of any unexpired terms of offices created by or whose duties are described in Article II, section 15, Article III, sections 16, 17, 19, 20, 21, 22, and 23, and Article IV, sections 3 and 5 of the state Constitution and RCW 2.06.080; (d) the election of county officers in any county governed by a charter containing provisions calling for general county elections at this time; and (e) the approval or rejection of state measures, including proposed constitutional amendments, matters pertaining to any proposed constitutional convention, initiative measures and referendum measures proposed by the electorate, referendum bills, and any other matter provided by the legislature for submission to the electorate.

(2) A county legislative authority may call a special county election by presenting a resolution to the county auditor prior to the proposed election date. A special election called by the county legislative authority shall be held on one of the following dates as decided by such governing body:

- (a) The second Tuesday in February;
- (b) The third Tuesday in April until January 1, 2013;
- (c) The fourth Tuesday in April on or after January 1, 2013;
- (d) The day of the primary as specified by RCW 29A.04.311; or
- (e) The first Tuesday after the first Monday in November.

(3) A resolution calling for a special election on a date set forth in subsection (2)(a) through (c) of this section must be presented to the county auditor at least forty-six days prior to the election date. A resolution calling for a special election on a date set forth in subsection (2)(d) of this section must be presented to the county auditor no later than the Friday immediately before the first day of regular candidate filing. A resolution calling for a special election on a date set forth in subsection (2)(e) of this section must be presented to the county auditor no later than the day of the primary.

(4) In addition to the dates set forth in subsection (2)(a) through (e) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God. Such county special election shall be noticed and conducted in the manner provided by law.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections. This section shall not be construed as fixing the time for holding primary elections, or elections for the recall of any elective public officer. [2011 c 349 § 3; 2009 c 413 § 2; (2009 c 413 § 1 expired July 1, 2011); 2006 c 344 § 2; 2004 c 271 § 106.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Effective date—2009 c 413 §§ 2 and 4: "Sections 2 and 4 of this act take effect July 1, 2011." [2009 c 413 § 6.]

Expiration date—2009 c 413 §§ 1 and 3: "Sections 1 and 3 of this act expire July 1, 2011." [2009 c 413 § 5.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

29A.04.330 City, town, and district general and special elections—Exceptions. (Effective January 1, 2012.)

(1) All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.

This section shall not apply to:

- (a) Elections for the recall of any elective public officer;
- (b) Public utility districts, conservation districts, or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto;

[2011 RCW Supp—page 616]

(c) Consolidation proposals as provided for in RCW 28A.315.235 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 RCW; and

(d) Special flood control districts consisting of three or more counties.

(2) The county auditor, as ex officio supervisor of elections, upon request in the form of a resolution of the governing body of a city, town, or district, presented to the auditor prior to the proposed election date, may call a special election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts. Such a special election shall be held on one of the following dates as decided by the governing body:

- (a) The second Tuesday in February;
- (b) The third Tuesday in April until January 1, 2013;
- (c) The fourth Tuesday in April on or after January 1, 2013;
- (d) The day of the primary election as specified by RCW 29A.04.311; or
- (e) The first Tuesday after the first Monday in November.

(3) A resolution calling for a special election on a date set forth in subsection (2)(a) through (c) of this section must be presented to the county auditor at least forty-six days prior to the election date. A resolution calling for a special election on a date set forth in subsection (2)(d) of this section must be presented to the county auditor no later than the Friday immediately before the first day of regular candidate filing. A resolution calling for a special election on a date set forth in subsection (2)(e) of this section must be presented to the county auditor no later than the day of the primary.

(4) In addition to subsection (2)(a) through (e) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God, except that no special election may be held between the first day for candidates to file for public office and the last day to certify the returns of the general election other than as provided in subsection (2)(d) and (e) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections. [2011 c 349 § 4. Prior: 2009 c 413 § 4; (2009 c 413 § 3 expired July 1, 2011); 2009 c 144 § 3; 2006 c 344 § 3; 2004 c 266 § 6; 2003 c 111 § 145; 2002 c 43 § 2; 1994 c 142 § 2; 1992 c 37 § 2; 1990 c 33 § 562; 1989 c 4 § 10 (Initiative Measure No. 99); 1986 c 167 § 6; 1980 c 3 § 2; 1975-'76 2nd ex.s. c 111 § 2; 1965 c 123 § 3; 1965 c 9 § 29.13.020; prior: 1963 c 200 § 1; 1955 c 55 § 1; 1951 c 101 § 1; 1949 c 161 § 1; 1927 c 182 § 1; 1923 c 53 § 2; 1921 c 61 § 2; Rem. Supp. 1949 § 5144. Formerly RCW 29.13.020.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Effective date—2009 c 413 §§ 2 and 4: See note following RCW 29A.04.321.

Expiration date—2009 c 413 §§ 1 and 3: See note following RCW 29A.04.321.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Effective date—2004 c 266: See note following RCW 29A.04.575.

Intent—2002 c 43: "The legislature finds that there are conflicting interpretations as to the intent of the legislature in the enactment of chapter 305, Laws of 1999. The purpose of this act is to make statutory changes that further clarify this intent.

It is the intent of the legislature that elections of conservation district supervisors continue to be conducted under procedures in the conservation district statutes, chapter 89.08 RCW, and that such elections not be conducted under the general election laws contained in Title 29 RCW. Further, it is the intent of the legislature that there be no change made with regard to applicability of the public disclosure act, *chapter 42.17 RCW, to conservation district supervisors from those that existed before the enactment of chapter 305, Laws of 1999." [2002 c 43 § 1.]

***Reviser's note:** Provisions in chapter 42.17 RCW relating to public disclosure are recodified in chapter 42.56 RCW by 2005 c 274.

Effective date—2002 c 43: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 14, 2002]." [2002 c 43 § 6.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Additional notes found at www.leg.wa.gov

29A.04.470 Grant program—Advisory committee.

(1) The secretary of state shall create an advisory committee and adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria for administering the local government grant program, which may include a preference for grants that include a match of local funds.

(2) The advisory committee shall review grant proposals and establish a prioritized list of projects to be considered for funding by the third Tuesday in May of each year beginning in 2004 and continuing as long as funds in the election account established by RCW 29A.04.440 are available. The grant award may have an effective date other than the date the project is placed on the prioritized list, including money spent previously by the county that would qualify for reimbursement under the Help America Vote Act (P.L. 107-252).

(3) Examples of projects that would be eligible for local government grant funding include, but are not limited to the following:

(a) Replacement or upgrade of voting equipment, including the replacement of punch card voting systems;

(b) Purchase of additional voting equipment, including the purchase of equipment to meet the disability requirements of the Help America Vote Act (P.L. 107-252);

(c) Purchase of new election management system hardware and software capable of integrating with the statewide voter registration system required by the Help America Vote Act (P.L. 107-252);

(d) Development and production of election worker training materials;

(e) Voter education programs;

(f) Publication of a local voters' pamphlet;

(g) Toll-free access system to provide notice of the outcome of provisional ballots; and

(h) Training for local election officials. [2011 c 10 § 10; 2004 c 267 § 203.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective dates—2004 c 267: See note following RCW 29A.08.010.

29A.04.540 Training of administrators. A person having responsibility for the administration or conduct of

elections shall, within eighteen months of undertaking those responsibilities, receive general training regarding the conduct of elections and specific training regarding their responsibilities and duties as prescribed by this title or by rules adopted by the secretary of state under this title. Included among those persons for whom such training is mandatory are the following:

(1) Secretary of state elections division personnel;

(2) County elections administrators under RCW 36.22.220; and

(3) Any other person or group charged with election administration responsibilities if the person or group is designated by rule adopted by the secretary of state as requiring the training.

Neither this section nor RCW 29A.04.530 may be construed as requiring an elected official to receive training or a certificate of training as a condition for seeking or holding elective office or as a condition for carrying out constitutional duties. [2011 c 10 § 11; 2009 c 415 § 9; 2003 c 111 § 152; 1992 c 163 § 6. Formerly RCW 29.60.040.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Additional notes found at www.leg.wa.gov

29A.04.580 County auditor and review staff. The county auditor may designate any person who has been certified under this chapter, other than the auditor, to participate in a review conducted in the county under this chapter. Each county auditor and canvassing board shall cooperate fully during an election review by making available to the reviewing staff any material requested by the staff. The reviewing staff shall have full access to the county's election material. If ballots are reviewed by the staff, they shall be reviewed in the presence of the canvassing board or its designees. Ballots shall not leave the custody of the canvassing board. During the review and after its completion, the review staff may make appropriate recommendations to the county auditor or canvassing board, or both, to bring the county into compliance with the training required under this chapter, and the laws or rules of the state of Washington, to safeguard election material or to preserve the integrity of the elections process. [2011 c 10 § 12; 2003 c 111 § 156. Prior: 1992 c 163 § 10. Formerly RCW 29.60.080.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Additional notes found at www.leg.wa.gov

29A.04.611 Rules by secretary of state. The secretary of state as chief election officer shall make reasonable rules in accordance with chapter 34.05 RCW not inconsistent with the federal and state election laws to effectuate any provision of this title and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district elections. To that end the secretary shall assist local election officers by devising uniform forms and procedures.

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions:

(1) The maintenance of voter registration records;

- (2) The preparation, maintenance, distribution, review, and filing of precinct maps;
- (3) Standards for the design, layout, and production of ballots;
- (4) The examination and testing of voting systems for certification;
- (5) The source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;
- (6) Standards and procedures for the acceptance testing of voting systems by counties;
- (7) Standards and procedures for testing the programming of vote tallying software for specific primaries and elections;
- (8) Standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;
- (9) Standards and procedures to ensure the accurate tabulation and canvassing of ballots;
- (10) Consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;
- (11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted;
- (12) The use of substitute devices or means of voting when a voting device is found to be defective, the counting of votes cast on the defective device, the counting of votes cast on the substitute device, and the documentation that must be submitted to the county auditor regarding such circumstances;
- (13) Procedures for the transportation of sealed containers of voted ballots or sealed voting devices;
- (14) The acceptance and filing of documents via electronic transmission;
- (15) Voter registration applications and records;
- (16) The use of voter registration information in the conduct of elections;
- (17) The coordination, delivery, and processing of voter registration records accepted by driver licensing agents or the department of licensing;
- (18) The coordination, delivery, and processing of voter registration records accepted by agencies designated by the governor to provide voter registration services;
- (19) Procedures to receive and distribute voter registration applications by mail;
- (20) Procedures for a voter to change his or her voter registration address within a county by telephone;
- (21) Procedures for a voter to change the name under which he or she is registered to vote;
- (22) Procedures for canceling dual voter registration records and for maintaining records of persons whose voter registrations have been canceled;
- (23) Procedures for the electronic transfer of voter registration records between county auditors and the office of the secretary of state;
- (24) Procedures and forms for declarations of candidacy;
- (25) Procedures and requirements for the acceptance and filing of declarations of candidacy by electronic means;
- (26) Procedures for the circumstance in which two or more candidates have a name similar in sound or spelling so as to cause confusion for the voter;
- (27) Filing for office;
- (28) The order of positions and offices on a ballot;
- (29) Sample ballots;
- (30) Independent evaluations of voting systems;
- (31) The testing, approval, and certification of voting systems;
- (32) The testing of vote tallying software programming;
- (33) Standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of ballots, including standards for the approval and implementation of hardware and software for automated signature verification systems;
- (34) Standards and procedures to guarantee the secrecy of ballots;
- (35) Uniformity among the counties of the state in the conduct of elections;
- (36) Standards and procedures to accommodate overseas voters and service voters;
- (37) The tabulation of paper ballots;
- (38) The accessibility of voting centers;
- (39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;
- (40) Procedures for conducting a statutory recount;
- (41) Procedures for filling vacancies in congressional offices if the general statutory time requirements for availability of ballots, certification, canvassing, and related procedures cannot be met;
- (42) Procedures for the statistical sampling of signatures for purposes of verifying and canvassing signatures on initiative, referendum, and recall election petitions;
- (43) Standards and deadlines for submitting material to the office of the secretary of state for the voters' pamphlet;
- (44) Deadlines for the filing of ballot titles for referendum bills and constitutional amendments if none have been provided by the legislature;
- (45) Procedures for the publication of a state voters' pamphlet;
- (46) Procedures for conducting special elections regarding nuclear waste sites if the general statutory time requirements for availability of ballots, certification, canvassing, and related procedures cannot be met;
- (47) Procedures for conducting partisan primary elections;
- (48) Standards and procedures for the proper conduct of voting on accessible voting devices;
- (49) Standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters;
- (50) All data formats for transferring voter registration data on electronic or machine-readable media for the purpose of administering the statewide voter registration list required by the Help America Vote Act (P.L. 107-252);
- (51) Defining the interaction of electronic voter registration election management systems employed by each county

auditor to maintain a local copy of each county's portion of the official state list of registered voters;

(52) Provisions and procedures to implement the state-based administrative complaint procedure as required by the Help America Vote Act (P.L. 107-252);

(53) Facilitating the payment of local government grants to local government election officers or vendors; and

(54) Standards for the verification of signatures on ballot declarations. [2011 c 10 § 13; 2009 c 369 § 5. Prior: 2006 c 207 § 1; 2006 c 206 § 2; 2004 c 271 § 151.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Chapter 29A.08 RCW VOTERS AND REGISTRATION

Sections

29A.08.130	Count of registered voters—Inactive voters.
29A.08.140	Voter registration deadlines.
29A.08.430	Repealed.
29A.08.440	Voter name change.
29A.08.620	Change of address information for mail ballots—Assignment of voter to inactive status—Confirmation notice.
29A.08.720	Registration, voting records—As public records—Information furnished—Restrictions, confidentiality.
29A.08.760	Computer file—Duplicate copy—Restrictions and penalties.
29A.08.775	Use and maintenance of statewide list.
29A.08.810	Basis for challenging a voter's registration—Who may bring a challenge—Challenger duties.
29A.08.820	Times for filing challenges—Hearings—Treatment of challenged ballots.

29A.08.130 Count of registered voters—Inactive voters. Election officials shall not include inactive voters in the count of registered voters for the purpose of dividing precincts, determining voter turnout, or other purposes in law for which the determining factor is the number of registered voters. [2011 c 10 § 14; 2009 c 369 § 13; 2003 c 111 § 210; 1994 c 57 § 40. Formerly RCW 29.10.081.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Additional notes found at www.leg.wa.gov

29A.08.140 Voter registration deadlines. (1) In order to vote in any primary, special election, or general election, a person who is not registered to vote in Washington must:

(a) Submit a registration application no later than twenty-nine days before the day of the primary, special election, or general election; or

(b) Register in person at the county auditor's office in his or her county of residence no later than eight days before the day of the primary, special election, or general election.

(2) A person who is already registered to vote in Washington may update his or her registration no later than twenty-nine days before the day of the primary, special election, or general election. A registered voter who fails to transfer his or her residential address by this deadline may vote according to his or her previous registration address. [2011 c 10 § 15; 2009 c 369 § 15; 2006 c 97 § 1; 2004 c 267 § 112; 2003 c 111 § 212. Prior: 1993 c 383 § 2; 1980 c 3 § 4; 1974 ex.s. c 127 § 4; 1971 ex.s. c 202 § 20; 1965 c 9 § 29.07.160; prior: 1947 c 68 § 2; 1933 c 1 § 9; Rem. Supp. 1947 § 5114-9. Formerly RCW 29.07.160.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective dates—2004 c 267: See note following RCW 29A.08.010.

29A.08.430 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.08.440 Voter name change. A registered voter who changes his or her name shall notify the county auditor regarding the name change by submitting a notice clearly identifying the name under which he or she is registered to vote, the voter's new name, and the voter's residence, and providing a signature of the new name, or by submitting a voter registration application. [2011 c 10 § 16; 2009 c 369 § 25; 2003 c 111 § 231; 1994 c 57 § 37; 1991 c 81 § 25. Formerly RCW 29.10.051.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Additional notes found at www.leg.wa.gov

29A.08.620 Change of address information for mail ballots—Assignment of voter to inactive status—Confirmation notice. (1) Each county auditor must request change of address information from the postal service for all mail ballots.

(2) The county auditor shall transfer the registration of a voter and send an acknowledgement notice to the new address informing the voter of the transfer if change of address information received by the county auditor from the postal service, the department of licensing, or another agency designated to provide voter registration services indicates that the voter has moved within the county.

(3) The county auditor shall place a voter on inactive status and send to all known addresses a confirmation notice and a voter registration application if change of address information received by the county auditor from the postal service, the department of licensing, or another agency designated to provide voter registration services indicates that the voter has moved from one county to another.

(4) The county auditor shall place a voter on inactive status and send to all known addresses a confirmation notice if any of the following occur:

(a) Any document mailed by the county auditor to a voter is returned by the postal service as undeliverable without address correction information; or

(b) Change of address information received from the postal service, the department of licensing, or another state agency designated to provide voter registration services indicates that the voter has moved out of the state. [2011 c 10 § 17; 2009 c 369 § 29. Prior: 2004 c 267 § 130; 2004 c 266 § 8; 2003 c 111 § 239; prior: 1994 c 57 § 38. Formerly RCW 29.10.071.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective dates—2004 c 267: See note following RCW 29A.08.010.

Effective date—2004 c 266: See note following RCW 29A.04.575.

Additional notes found at www.leg.wa.gov

29A.08.720 Registration, voting records—As public records—Information furnished—Restrictions, confidentiality. (1) In the case of voter registration records received

through the department of licensing or an agency designated under RCW 29A.08.310, the identity of the office or agency at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. Any record of a particular individual's choice not to register to vote at an office of the department of licensing or a state agency designated under RCW 29A.08.310 is not available for public inspection and any information regarding such a choice by a particular individual shall not be disclosed to the public.

(2) Subject to the restrictions of RCW 29A.08.710 and 40.24.060, precinct lists and current lists of registered voters are public records and must be made available for public inspection and copying under such reasonable rules and regulations as the county auditor or secretary of state may prescribe. The county auditor or secretary of state shall promptly furnish current lists of registered voters in his or her possession, at actual reproduction cost, to any person requesting such information. The lists shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. However, the lists and labels may be used for any political purpose. The county auditor or secretary of state must provide a copy of RCW 29A.08.740 to the person requesting the material that is released under this section.

(3) For the purposes of this section, "political purpose" means a purpose concerned with the support of or opposition to any candidate for any partisan or nonpartisan office or concerned with the support of or opposition to any ballot proposition or issue. "Political purpose" includes, but is not limited to, such activities as the advertising for or against any candidate or ballot measure or the solicitation of financial support. [2011 c 10 § 18; 2009 c 369 § 34; 2005 c 246 § 18; 2004 c 266 § 9; 2003 c 111 § 247; 1994 c 57 § 5; 1975-'76 2nd ex.s. c 46 § 1; 1974 ex.s. c 127 § 2; 1973 1st ex.s. c 111 § 2; 1971 ex.s. c 202 § 3; 1965 ex.s. c 156 § 6. Formerly RCW 29.04.100.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2005 c 246: See note following RCW 10.64.140.

Effective date—2004 c 266: See note following RCW 29A.04.575.

Forms, secretary of state to design—Availability to public: RCW 29A.08.850.

Additional notes found at www.leg.wa.gov

29A.08.760 Computer file—Duplicate copy—Restrictions and penalties. The secretary of state shall provide a duplicate copy of the master statewide computer file or electronic data file of registered voters to the consolidated technology services agency for purposes of creating the jury source list without cost. Restrictions as to the commercial use of the information on the statewide computer tape or data file of registered voters, and penalties for its misuse, shall be the same as provided in RCW 29A.08.720 and 29A.08.740. [2011 1st sp.s. c 43 § 813; 2009 c 369 § 35; 2004 c 267 § 134; 2003 c 111 § 251; 1995 c 135 § 2. Prior: 1993 c 441 § 2; 1993 c 408 § 10; 1977 ex.s. c 226 § 1; 1975-'76 2nd ex.s. c 46 § 3. Formerly RCW 29.04.160.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

[2011 RCW Supp—page 620]

Effective dates—2004 c 267: See note following RCW 29A.08.010.

Intent—1995 c 135: "The only intent of the legislature in this act is to correct multiple amendments and delete obsolete provisions. It is not the intent of the legislature to change the substance or effect of any presently effective statute." [1995 c 135 § 1.]

Additional notes found at www.leg.wa.gov

29A.08.775 Use and maintenance of statewide list. Only voters who appear on the official statewide voter registration list are eligible to participate in elections. Each county shall maintain a copy of that county's portion of the state list. The county must ensure that voter registration data used for the production, issuance, and processing of ballots in the administration of each election are the same as the official statewide voter registration list. [2011 c 10 § 19; 2005 c 246 § 20; 2004 c 267 § 136.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2005 c 246: See note following RCW 10.64.140.

Effective dates—2004 c 267: See note following RCW 29A.08.010.

29A.08.810 Basis for challenging a voter's registration—Who may bring a challenge—Challenger duties. (1) Registration of a person as a voter is presumptive evidence of his or her right to vote. A challenge to the person's right to vote must be based on personal knowledge of one of the following:

(a) The challenged voter has been convicted of a felony and the voter's civil rights have not been restored;

(b) The challenged voter has been judicially declared ineligible to vote due to mental incompetency;

(c) The challenged voter does not live at the residential address provided, in which case the challenger must either:

(i) Provide the challenged voter's actual residence on the challenge form; or

(ii) Submit evidence that he or she exercised due diligence to verify that the challenged voter does not reside at the address provided and to attempt to contact the challenged voter to learn the challenged voter's actual residence, including that the challenger personally:

(A) Sent a letter with return service requested to the challenged voter's residential address provided, and to the challenged voter's mailing address, if provided;

(B) Visited the residential address provided and contacted persons at the address to determine whether the voter resides at the address and, if not, obtained and submitted with the challenge form a signed affidavit subject to the penalties of perjury from a person who owns or manages property, resides, or is employed at the address provided, that to his or her personal knowledge the challenged voter does not reside at the address as provided on the voter registration;

(C) Searched local telephone directories, including online directories, to determine whether the voter maintains a telephone listing at any address in the county;

(D) Searched county auditor property records to determine whether the challenged voter owns any property in the county; and

(E) Searched the statewide voter registration database to determine if the voter is registered at any other address in the state;

(d) The challenged voter will not be eighteen years of age by the next election; or

(e) The challenged voter is not a citizen of the United States.

(2) A person's right to vote may be challenged by another registered voter or the county prosecuting attorney.

(3) The challenger must file a signed affidavit subject to the penalties of perjury swearing that, to his or her personal knowledge and belief, having exercised due diligence to personally verify the evidence presented, the challenged voter either is not qualified to vote or does not reside at the address given on his or her voter registration record based on one of the reasons allowed in subsection (1) of this section. The challenger must provide the factual basis for the challenge, including any information required by subsection (1)(c) of this section, in the signed affidavit. The challenge may not be based on unsupported allegations or allegations by anonymous third parties. All documents pertaining to the challenge are public records.

(4) Challenges based on a felony conviction under RCW 29A.08.520 must be heard according to RCW 29A.08.520 and rules adopted by the secretary of state. [2011 c 10 § 20; 2006 c 320 § 4; 2003 c 111 § 253. Prior: 2001 c 41 § 9; 1987 c 288 § 1; 1983 1st ex.s. c 30 § 2. Formerly RCW 29.10.125.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Right to vote

loss of: State Constitution Art. 6 § 3, RCW 11.88.010, 11.88.090.
restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

29A.08.820 Times for filing challenges—Hearings—Treatment of challenged ballots. (1) Challenges initiated by a registered voter against a voter who registered to vote less than sixty days before the election, or who changed residence less than sixty days before the election without transferring his or her registration, must be filed not later than ten days before any primary or election, general or special, or within ten days of the voter being added to the voter registration database, whichever is later, at the office of the appropriate county auditor. Challenges initiated by a registered voter or county prosecuting attorney must be filed not later than forty-five days before the election.

(2)(a) If the challenge is filed within forty-five days before an election at which the challenged voter is eligible to vote, a notation of the challenge must be made immediately in the voter registration system, and the county canvassing board presides over the hearing.

(b) If the challenge is filed before the challenged voter's ballot is received, the ballot must be treated as a challenged ballot.

(c) If the challenge is filed after the challenged voter's ballot is received, the challenge cannot affect the current election.

(3) If the challenge is filed at least forty-five days before an election at which the challenged voter is eligible to vote, the county auditor presides over the hearing. [2011 c 10 § 21; 2006 c 320 § 5; 2003 c 111 § 254; 1987 c 288 § 2; 1983 1st ex.s. c 30 § 3. Formerly RCW 29.10.127.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Right to vote

loss of: State Constitution Art. 6 § 3, RCW 11.88.010, 11.88.090.
restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

Chapter 29A.12 RCW VOTING SYSTEMS

Sections

29A.12.085 Paper record.
29A.12.090 Repealed.
29A.12.110 Record of programming—Devices sealed.
29A.12.120 Counting center personnel—Instruction, requirements.
29A.12.160 Blind or visually impaired voter accessibility.

29A.12.085 Paper record. Beginning on January 1, 2006, all direct recording electronic voting devices must produce a paper record of each vote that may be accepted or rejected by the voter before finalizing his or her vote. This record may not be removed from the voting center, and must be human readable without an interface and machine readable for counting purposes. If the device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter. Rejected records must either be destroyed or marked in order to clearly identify the record as rejected. Paper records produced by direct recording electronic voting devices are subject to all the requirements of chapter 29A.60 RCW for ballot handling, preservation, reconciliation, transit, and storage. The paper records must be preserved in the same manner and for the same period of time as ballots. [2011 c 10 § 22; 2005 c 242 § 1.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Preservation: RCW 29A.60.095.

Unauthorized removal from voting center: RCW 29A.84.545.

29A.12.090 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.12.110 Record of programming—Devices sealed. In preparing a voting device for a primary or election, a record shall be made of the programming installed in each device. Except where provided by a rule adopted under RCW 29A.04.611, after being prepared for a primary or election, each device shall be sealed with a uniquely numbered seal. The programmed memory pack for each voting device must be sealed into the device during final preparation and logic and accuracy testing. Except in the case of a device breakdown or error in programming, the memory pack must remain sealed in the device until after 8:00 p.m. on the day of the primary, special election, or general election. [2011 c 10 § 23; 2003 c 111 § 311; 1990 c 59 § 25. Formerly RCW 29.33.330.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

29A.12.120 Counting center personnel—Instruction, requirements. (1) Before each state primary or general election at which voting systems are to be used, the county audi-

tor shall instruct all counting center personnel who will operate a voting system in the proper conduct of their voting system duties.

(2) The county auditor may waive instructional requirements for counting center personnel who have previously received instruction and who have served for a sufficient length of time to be fully qualified to perform their duties. The county auditor shall keep a record of each person who has received instruction and is qualified to serve at the subsequent primary or election.

(3) No person may work in a counting center at a primary or election at which a vote tallying system is used unless that person has received the required instruction and is qualified to perform his or her duties in connection with the handling and tallying of ballots for that primary or election. [2011 c 10 § 24; 2003 c 111 § 312. Prior: 1990 c 59 § 29; 1977 ex.s. c 361 § 69. Formerly RCW 29.33.340, 29.34.143.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Additional notes found at www.leg.wa.gov

29A.12.160 Blind or visually impaired voter accessibility. (1) At each voting center, at least one voting unit certified by the secretary of state shall provide access to individuals who are blind or visually impaired.

(2) For purposes of this section, the following definitions apply:

(a) "Accessible" includes receiving, using, selecting, and manipulating voter data and controls.

(b) "Nonvisual" includes synthesized speech, Braille, and other output methods.

(c) "Blind and visually impaired" excludes persons who are both deaf and blind. [2011 c 10 § 25; 2004 c 267 § 701; 2004 c 266 § 3. Prior: 2003 c 110 § 1. Formerly RCW 29.33.305.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective dates—2004 c 267: See note following RCW 29A.08.010.

Effective date—2004 c 266: See note following RCW 29A.04.575.

Chapter 29A.16 RCW PRECINCTS

Sections

- 29A.16.010 through 29A.16.030 Repealed.
 29A.16.040 Precincts—Boundaries may be altered. (*Effective until January 1, 2012.*)
 29A.16.040 Precincts—Boundaries may be altered. (*Effective January 1, 2012.*)
 29A.16.060 through 29A.16.170 Repealed.

29A.16.010 through 29A.16.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.16.040 Precincts—Boundaries may be altered. (*Effective until January 1, 2012.*) The county legislative authority of each county in the state shall divide the county into election precincts and establish the boundaries of the precincts.

[2011 RCW Supp—page 622]

(1) Precinct boundaries may be altered at any time as long as sufficient time exists prior to a given election for the necessary procedural steps to be honored. Except as permitted under subsection (3) of this section, no precinct changes may be made during the period starting fourteen days prior to the first day for candidates to file for the primary election and ending with the day of the general election.

(2) The county legislative authority may establish by ordinance a limitation on the maximum number of active registered voters in each precinct within its jurisdiction. The number may be less than the number established by law, but in no case may the number exceed one thousand five hundred active registered voters.

(3) The county auditor shall temporarily adjust precinct boundaries when a city or town annexes unincorporated territory to the city or town, or whenever unincorporated territory is incorporated as a city or town. The adjustment must be made as soon as possible after the approval of the annexation or incorporation. The temporary adjustment must be limited to the minimum changes necessary to accommodate the addition of the territory to the city or town, or to establish the eligible voters within the boundaries of the new city or town, and remains in effect only until precinct boundary modifications reflecting the annexation or incorporation are adopted by the county legislative authority. [2011 c 10 § 26; 2004 c 266 § 10; 2003 c 111 § 404; 1999 c 158 § 3; 1994 c 57 § 3; 1986 c 167 § 2; 1980 c 107 § 3. Prior: 1977 ex.s. c 361 § 4; 1977 ex.s. c 128 § 1; 1975-'76 2nd ex.s. c 129 § 3; 1967 ex.s. c 109 § 1; 1965 c 9 § 29.04.040; prior: (i) 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. (ii) 1907 c 130 § 2, part; 1889 p 408 § 21, part; RRS § 5278, part. (iii) Code 1881 § 2679; 1854 p 65 § 4, part; No RRS. Formerly RCW 29.04.040.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2004 c 266: See note following RCW 29A.04.575.

"Precinct" defined: RCW 29A.04.121.

Additional notes found at www.leg.wa.gov

29A.16.040 Precincts—Boundaries may be altered. (*Effective January 1, 2012.*) The county legislative authority of each county in the state shall divide the county into election precincts and establish the boundaries of the precincts.

(1) Precinct boundaries may be altered at any time as long as sufficient time exists prior to a given election for the necessary procedural steps to be honored. Except as permitted under subsection (3) of this section, no precinct changes may be made during the period starting fourteen days prior to the first day for candidates to file for the primary election and ending with the day of the general election.

(2) The county legislative authority may establish by ordinance a limitation on the maximum number of active registered voters in each precinct within its jurisdiction. The number may be less than the number established by law, but in no case may the number exceed one thousand five hundred active registered voters.

(3) The county auditor shall temporarily adjust precinct boundaries when a city or town annexes unincorporated terri-

tory to the city or town, or whenever unincorporated territory is incorporated as a city or town. The adjustment must be made as soon as possible after the approval of the annexation or incorporation. The temporary adjustment must be limited to the minimum changes necessary to accommodate the addition of the territory to the city or town, or to establish the eligible voters within the boundaries of the new city or town, and remains in effect only until precinct boundary modifications reflecting the annexation or incorporation are adopted by the county legislative authority. [2011 c 349 § 5; 2011 c 10 § 26; 2004 c 266 § 10; 2003 c 111 § 404; 1999 c 158 § 3; 1994 c 57 § 3; 1986 c 167 § 2; 1980 c 107 § 3. Prior: 1977 ex.s. c 361 § 4; 1977 ex.s. c 128 § 1; 1975-'76 2nd ex.s. c 129 § 3; 1967 ex.s. c 109 § 1; 1965 c 9 § 29.04.040; prior: (i) 1921 c 178 § 1, part; 1915 c 11 § 1, part; 1907 c 130 § 1, part; 1889 p 402 § 7, part; Code 1881 § 3067, part; 1865 p 30 § 1, part; RRS § 5171, part. (ii) 1907 c 130 § 2, part; 1889 p 408 § 21, part; RRS § 5278, part. (iii) Code 1881 § 2679; 1854 p 65 § 4, part; No RRS. Formerly RCW 29.04.040.]

Reviser's note: This section was amended by 2011 c 10 § 26 and by 2011 c 349 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 349: See note following RCW 29A.04.255.

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2004 c 266: See note following RCW 29A.04.575.

"Precinct" defined: RCW 29A.04.121.

Additional notes found at www.leg.wa.gov

29A.16.060 through 29A.16.170 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 29A.24 RCW FILING FOR OFFICE

Sections

29A.24.040	Declaration of candidacy—Electronic filing. (<i>Effective January 1, 2012.</i>)
29A.24.050	Declaration of candidacy—Certain offices, when filed. (<i>Effective January 1, 2012.</i>)
29A.24.081	Declaration—Filing by mail.
29A.24.131	Withdrawal of candidacy. (<i>Effective January 1, 2012.</i>)
29A.24.141	Void in candidacy. (<i>Effective January 1, 2012.</i>)
29A.24.151	Repealed.
29A.24.161	Repealed.
29A.24.171	First day of regular filing period—Vacancies.
29A.24.181	Regular filing period—Voids in candidacy.
29A.24.191	Scheduled election lapses, when.
29A.24.210	Repealed.
29A.24.211	Repealed.
29A.24.311	Write-in voting—Candidates, declaration. (<i>Effective January 1, 2012.</i>)

29A.24.040 Declaration of candidacy—Electronic filing. (*Effective January 1, 2012.*) A candidate may file his or her declaration of candidacy for an office by electronic means on a system specifically designed and authorized by a filing officer to accept filings.

(1) Filings that are received electronically must capture all information specified in RCW 29A.24.031 (1) through (4).

(2) Electronic filing may begin at 9:00 a.m. the first day of the filing period and continue through 4:00 p.m. the last

day of the filing period. [2011 c 349 § 6; 2006 c 344 § 5; 2003 c 111 § 604. Prior: 2002 c 140 § 2. Formerly RCW 29.15.044.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Implementation—2002 c 140: "The secretary of state may take the necessary steps to ensure that this act is implemented on its effective date." [2002 c 140 § 5.]

Captions not law—2002 c 140: "Section captions used in this act are not part of the law." [2002 c 140 § 6.]

29A.24.050 Declaration of candidacy—Certain offices, when filed. (*Effective January 1, 2012.*) Except where otherwise provided by this title, declarations of candidacy for the following offices shall be filed during regular business hours with the filing officer beginning the Monday two weeks before Memorial day and ending the following Friday in the year in which the office is scheduled to be voted upon:

(1) Offices that are scheduled to be voted upon for full terms or both full terms and short terms at, or in conjunction with, a state general election; and

(2) Offices where a vacancy, other than a short term, exists that has not been filled by election and for which an election to fill the vacancy is required in conjunction with the next state general election.

This section supersedes all other statutes that provide for a different filing period for these offices. [2011 c 349 § 7; 2006 c 344 § 6; 2003 c 111 § 605. Prior: 1990 c 59 § 81; 1986 c 167 § 8; 1984 c 142 § 2. Formerly RCW 29.15.020, 29.18.025.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Intent—1984 c 142: "It is the intention of the legislature that this act shall provide an equitable qualifying procedure for candidates who, at the time of filing, lack sufficient assets or income to pay the filing fees otherwise required of candidates for public office." [1984 c 142 § 1.]

Additional notes found at www.leg.wa.gov

29A.24.081 Declaration—Filing by mail. Any candidate may mail his or her declaration of candidacy for an office to the filing officer. Such declarations of candidacy shall be processed by the filing officer in the following manner:

(1) Any declaration received by the filing officer by mail before the tenth business day immediately preceding the first day for candidates to file for office shall be returned to the candidate submitting it, together with a notification that the declaration of candidacy was received too early to be processed. The candidate shall then be permitted to resubmit his or her declaration of candidacy during the filing period.

(2) Any properly executed declaration of candidacy received by mail on or after the tenth business day immediately preceding the first day for candidates to file for office and before the close of business on the last day of the filing period shall be included with filings made in person during the filing period.

(3) Any declaration of candidacy received by the filing officer after the close of business on the last day for candi-

dates to file for office shall be rejected and returned to the candidate attempting to file it. [2011 c 10 § 27; 2004 c 271 § 159.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.24.131 Withdrawal of candidacy. (Effective January 1, 2012.) A candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Monday following the last day for candidates to file under RCW 29A.24.050 by filing, with the officer with whom the declaration of candidacy was filed, a signed request that his or her name not be printed on the ballot. There shall be no withdrawal period for declarations of candidacy filed during special filing periods held under this title. No filing fee may be refunded to any candidate who withdraws under this section. Notice of the deadline for withdrawal of candidacy and that the filing fee is not refundable shall be given to each candidate at the time he or she files. [2011 c 349 § 8; 2004 c 271 § 115.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

29A.24.141 Void in candidacy. (Effective January 1, 2012.) A void in candidacy occurs when an election has been scheduled and no valid declaration of candidacy has been filed for the position or all persons filing such valid declarations of candidacy have died or been disqualified. [2011 c 349 § 9; 2004 c 271 § 162.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

29A.24.151 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.24.161 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.24.171 First day of regular filing period—Vacancies. (1) If, prior to the first day of the regular filing period, a vacancy occurs in an office that is not scheduled to appear on the general election ballot, leaving an unexpired term for which a successor must be elected at the next general election, filings for that office shall be accepted during the regular filing period. The filing officer shall provide notice of the vacancy and filing period to newspapers, radio, and television in the county, and online. The position shall appear on the primary and general election ballots unless no primary is required or unless a candidate for superior court judge is entitled to a certificate of election pursuant to Article 4 [IV], section 29 of the state Constitution.

(2) If, on the first day of the regular filing period or later, a vacancy occurs in an office that is not scheduled to appear on the general election ballot, leaving an unexpired term, the election of the successor shall occur at the next succeeding general election that the office is allowed by law to have an election. [2011 c 349 § 10; 2006 c 344 § 7; 2004 c 271 § 165.]

Effective date—2011 c 349 §§ 10-12, 27, 28, and 30: "Sections 10 through 12, 27, 28, and 30 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 16, 2011]." [2011 c 349 § 34.]

[2011 RCW Supp—page 624]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

29A.24.181 Regular filing period—Voids in candidacy. (1) If a void in candidacy occurs following the regular filing period and deadline to withdraw, but prior to the day of the primary, filings for that office shall be reopened for a period of three normal business days, such three-day period to be fixed by the filing officer. The filing officer shall provide notice of the special filing period to newspapers, radio, and television in the county, and online. The candidate receiving a plurality of the votes cast for that office in the general election is deemed elected.

(2) This section does not apply to voids in candidacy in the office of precinct committee officer, which are filled by appointment pursuant to RCW 29A.28.071. [2011 c 349 § 11; 2006 c 344 § 8; 2004 c 271 § 166.]

Effective date—2011 c 349 §§ 10-12, 27, 28, and 30: See note following RCW 29A.24.171.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

29A.24.191 Scheduled election lapses, when. A scheduled election shall be lapsed, the office deemed stricken from the ballot, no purported write-in votes counted, and no candidate certified as elected, when a void in candidacy occurs following the special three-day filing period required by RCW 29A.24.181. [2011 c 349 § 12; 2006 c 344 § 9; 2004 c 271 § 167.]

Effective date—2011 c 349 §§ 10-12, 27, 28, and 30: See note following RCW 29A.24.171.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

29A.24.210 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.24.211 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.24.311 Write-in voting—Candidates, declaration. (Effective January 1, 2012.) Any person who desires to be a write-in candidate and have such votes counted at a primary or election may file a declaration of candidacy with the officer designated in RCW 29A.24.070 not later than the day ballots must be mailed according to RCW 29A.40.070. Declarations of candidacy for write-in candidates must be accompanied by a filing fee in the same manner as required of other candidates filing for the office as provided in RCW 29A.24.091.

Votes cast for write-in candidates who have filed such declarations of candidacy and write-in votes for persons appointed by major political parties pursuant to RCW 29A.28.021 need only specify the name of the candidate in the appropriate location on the ballot in order to be counted. Write-in votes cast for any other candidate, in order to be counted, must designate the office sought and position number or political party, in the manner in which the write-in is done does not make the office or position clear.

No person may file as a write-in candidate where:

(1) At a general election, the person attempting to file either filed as a write-in candidate for the same office at the preceding primary or the person's name appeared on the ballot for the same office at the preceding primary;

(2) The person attempting to file as a write-in candidate has already filed a valid write-in declaration for that primary or election, unless one or the other of the two filings is for the office of precinct committeeperson;

(3) The name of the person attempting to file already appears on the ballot as a candidate for another office, unless one of the two offices for which he or she is a candidate is precinct committeeperson.

The declaration of candidacy shall be similar to that required by RCW 29A.24.031. No write-in candidate filing under this section may be included in any voter's pamphlet produced under chapter 29A.32 RCW unless that candidate qualifies to have his or her name printed on the general election ballot. The legislative authority of any jurisdiction producing a local voter's pamphlet under chapter 29A.32 RCW may provide, by ordinance, for the inclusion of write-in candidates in such pamphlets. [2011 c 349 § 13; 2004 c 271 § 117.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

**Chapter 29A.28 RCW
VACANCIES**

Sections

- 29A.28.041 Congress—Special election. *(Effective January 1, 2012.)*
- 29A.28.061 Congress—General, primary election laws to apply—Time deadlines, modifications.

29A.28.041 Congress—Special election. *(Effective January 1, 2012.)* (1) Whenever a vacancy occurs in the United States house of representatives or the United States senate from this state, the governor shall order a special election to fill the vacancy. Minor political party candidates and independent candidates may be nominated through the convention procedures provided in chapter 29A.20 RCW.

(2) Within ten days of such vacancy occurring, he or she shall issue a writ of election fixing a date for the primary at least seventy days after issuance of the writ, and fixing a date for the election at least seventy days after the date of the primary. If the vacancy is in the office of United States representative, the writ of election shall specify the congressional district that is vacant.

(3) If the vacancy occurs less than eight months before a state general election and before the close of the filing period for that general election, the special primary, special vacancy election, and minor party and independent candidate nominating conventions must be held in concert with the state primary and state general election in that year.

(4) If the vacancy occurs on or after the first day for filing under RCW 29A.24.050 and on or before the close of the filing period, a special filing period of three normal business days shall be fixed by the governor and notice thereof given to all media, including press, radio, and television within the area in which the vacancy election is to be held, to the end that, insofar as possible, all interested persons will be aware of such filing period. The names of major political party candidates who have filed valid declarations of candidacy during

this three-day period shall appear on the approaching primary ballot. The requirements of RCW 29A.20.131 do not apply to a minor political party or independent candidate convention held under this subsection.

(5) If the vacancy occurs later than the close of the filing period, a special primary and vacancy election to fill the position shall be held after the next state general election but, in any event, no later than the ninetieth day following the November election. [2011 c 349 § 14; 2006 c 344 § 12; 2004 c 271 § 118.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

29A.28.061 Congress—General, primary election laws to apply—Time deadlines, modifications. The general election laws and laws relating to partisan primaries shall apply to the special primaries and vacancy elections provided for in chapter 29A.28 RCW to the extent that they are not inconsistent with the provisions of these sections. Minor political party and independent candidates may appear only on the general election ballot. Statutory time deadlines relating to availability of ballots, certification, canvassing, and related procedures that cannot be met in a timely fashion may be modified for the purposes of a specific primary or vacancy election under this chapter by the secretary of state through emergency rules adopted under RCW 29A.04.611. [2011 c 10 § 28; 2004 c 271 § 119.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

**Chapter 29A.32 RCW
VOTERS' PAMPHLETS**

Sections

- 29A.32.031 Contents. *(Effective January 1, 2012.)*
- 29A.32.241 Contents.
- 29A.32.260 Mailing.

29A.32.031 Contents. *(Effective January 1, 2012.)* The voters' pamphlet published or distributed under RCW 29A.32.010 must contain:

(1) Information about each measure for an advisory vote of the people and each ballot measure initiated by or referred to the voters for their approval or rejection as required by RCW 29A.32.070;

(2) In even-numbered years, statements, if submitted, from candidates for the office of president and vice president of the United States, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court. Candidates may also submit campaign contact information and a photograph not more than five years old in a format that the secretary of state determines to be suitable for reproduction in the voters' pamphlet;

(3) In odd-numbered years, if any office voted upon statewide appears on the ballot due to a vacancy, then state-

ments and photographs for candidates for any vacant office listed in subsection (2) of this section must appear;

(4) Contact information for the public disclosure commission established under RCW 42.17A.100;

(5) Contact information for major political parties;

(6) A brief statement explaining the deletion and addition of language for proposed measures under RCW 29A.32.080; and

(7) Any additional information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters. [2011 c 60 § 13; 2009 c 415 § 2; 2008 c 1 § 12 (Initiative Measure No. 960, approved November 6, 2007); 2004 c 271 § 121.]

Effective date—2011 c 60: See RCW 42.17A.919.

Findings—Intent—Construction—Severability—Subheadings and part headings not law—Short title—Effective date—2008 c 1 (Initiative Measure No. 960): See notes following RCW 43.135.031.

29A.32.241 Contents. The local voters' pamphlet shall include but not be limited to the following:

(1) Appearing on the cover, the words "official local voters' pamphlet," the name of the jurisdiction producing the pamphlet, and the date of the election or primary;

(2) A list of jurisdictions that have measures or candidates in the pamphlet;

(3) Information on how a person may register to vote and obtain a ballot;

(4) The text of each measure accompanied by an explanatory statement prepared by the prosecuting attorney for any county measure or by the attorney for the jurisdiction submitting the measure if other than a county measure. All explanatory statements for city, town, or district measures not approved by the attorney for the jurisdiction submitting the measure shall be reviewed and approved by the county prosecuting attorney or city attorney, when applicable, before inclusion in the pamphlet;

(5) The arguments for and against each measure submitted by committees selected pursuant to RCW 29A.32.280; and

(6) For partisan primary elections, information on how to vote the applicable ballot format and an explanation that minor political party candidates and independent candidates will appear only on the general election ballot. [2011 c 10 § 29; 2004 c 271 § 123.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.32.260 Mailing. As soon as practicable before the primary, special election, or general election, the county auditor, or if applicable, the city clerk of a first-class or code city, as appropriate, shall mail the local voters' pamphlet to every residence in each jurisdiction that has included information in the pamphlet. The county auditor or city clerk, as appropriate, may choose to mail the pamphlet to each registered voter in each jurisdiction that has included information in the pamphlet, if in his or her judgment, a more economical and effective distribution of the pamphlet would result. [2011 c 10 § 30; 2003 c 111 § 818. Prior: 1984 c 106 § 8. Formerly RCW 29.81A.060.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

[2011 RCW Supp—page 626]

Chapter 29A.36 RCW

BALLOTS AND OTHER VOTING FORMS

Sections

- 29A.36.010 Certifying primary candidates. (*Effective January 1, 2012.*)
 29A.36.011 Repealed. (*Effective January 1, 2012.*)
 29A.36.115 Provisional ballots.
 29A.36.131 Order of candidates on ballots.
 29A.36.161 Arrangement of instructions, measures, offices—Order of candidates.
 29A.36.220 Expense of printing and mailing ballots, envelopes, and instructions.

29A.36.010 Certifying primary candidates. (*Effective January 1, 2012.*) Not later than the Tuesday following the regular filing period, the secretary of state shall certify to each county auditor a list of the candidates who have filed declarations of candidacy in his or her office for the primary. For each office, the certificate shall include the name of each candidate, his or her address, and his or her party preference or independent designation as shown on filed declarations. [2011 c 349 § 15. Prior: 2005 c 2 § 12 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 111 § 901; prior: 1990 c 59 § 8; 1965 ex.s. c 103 § 4; 1965 c 9 § 29.27.020; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.27.020.]

Reviser's note: The constitutionality of Initiative Measure No. 872 was upheld in *Washington State Grange v. Washington State Republican Party, et al.*, 552 U.S. . . . (2008).

Effective date—2011 c 349: See note following RCW 29A.04.255.

Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872): See notes following RCW 29A.52.112.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

29A.36.011 Repealed. (*Effective January 1, 2012.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.36.115 Provisional ballots. All provisional ballots must be visually distinguishable from other ballots and incapable of being tabulated by a voting system. [2011 c 10 § 31; 2005 c 243 § 3.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.36.131 Order of candidates on ballots. After the close of business on the last day for candidates to file for office, the filing officer shall, from among those filings made in person and by mail, determine by lot the order in which the names of those candidates will appear on all ballots. The determination shall be done publicly and may be witnessed by the media and by any candidate. If no primary is required for any nonpartisan office under RCW 29A.52.011 or 29A.52.220, or if any independent or minor party candidate files a declaration of candidacy, the names shall appear on the general election ballot in the order determined by lot. [2011 c 10 § 32; 2004 c 271 § 130.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.36.161 Arrangement of instructions, measures, offices—Order of candidates. (1) On the top of each ballot must be printed clear and concise instructions directing the voter how to mark the ballot, including write-in votes. On the top of each primary ballot must be printed the instructions required by this chapter.

(2) The ballot must have a clear delineation between the ballot instructions and the first ballot measure or office through the use of white space, illustration, shading, color, symbol, font size, or bold type. The secretary of state shall establish standards for ballot design and layout consistent with this section and RCW 29A.04.611.

(3) The questions of adopting constitutional amendments or any other state measure authorized by law to be submitted to the voters at that election must appear after the instructions and before any offices.

(4) In a year that president and vice president appear on the general election ballot, the names of candidates for president and vice president for each political party must be grouped together with a single response position for a voter to indicate his or her choice.

(5) On a general election ballot, the candidate or candidates of the major political party that received the highest number of votes from the electors of this state for the office of president of the United States at the last presidential election must appear first following the appropriate office heading. The candidate or candidates of the other major political parties will follow according to the votes cast for their nominees for president at the last presidential election, and independent candidates and the candidate or candidates of all other parties will follow in the order of their qualification with the secretary of state. [2011 c 10 § 33; 2010 c 32 § 1; 2004 c 271 § 132.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.36.220 Expense of printing and mailing ballots, envelopes, and instructions. The cost of printing and mailing ballots, envelopes, and instructions shall be an election cost that shall be borne as determined under RCW 29A.04.410 and 29A.04.420, as appropriate. [2011 c 10 § 34; 2003 c 111 § 922. Prior: 1990 c 59 § 16; 1965 c 9 § 29.30.130; prior: 1889 p 400 § 1; RRS § 5269. Formerly RCW 29.30.130.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Chapter 29A.40 RCW ELECTIONS BY MAIL

Sections

29A.40.010	When permitted.
29A.40.020	Request for ballot from an overseas voter or service voter.
29A.40.030	Repealed.
29A.40.040	Repealed.
29A.40.050	Special ballots.
29A.40.061	Repealed.
29A.40.070	Date ballots available, mailed. (<i>Effective until January 1, 2012.</i>)
29A.40.070	Date ballots mailed. (<i>Effective January 1, 2012.</i>)
29A.40.080	Repealed.

29A.40.091	Envelopes, declaration, and instructions (<i>as amended by 2011 c 10.</i>)
29A.40.091	Envelopes and instructions (<i>as amended by 2011 c 182.</i>)
29A.40.091	Envelopes, declaration, and instructions (<i>as amended by 2011 c 348.</i>)
29A.40.091	Envelopes, declaration, and instructions (<i>as amended by 2011 c 349.</i>)
29A.40.100	Observers.
29A.40.110	Processing incoming ballots. (<i>Effective until January 1, 2012.</i>)
29A.40.110	Processing incoming ballots. (<i>Effective January 1, 2012.</i>)
29A.40.120	Repealed.
29A.40.130	Record of voters issued a ballot and voters who returned a ballot—Public access.
29A.40.140	Repealed.
29A.40.150	Repealed. (<i>Effective January 1, 2012.</i>)
29A.40.160	Voting centers.

29A.40.010 When permitted. Each registered voter of the state, overseas voter, and service voter shall automatically be issued a mail ballot for each general election, special election, or primary. Overseas voters and service voters are authorized to cast the same ballots, including those for special elections, as a registered voter of the state would receive under this chapter. Each registered voter shall continue to receive a ballot by mail until the death or disqualification of the voter, cancellation of the voter's registration, or placing the voter on inactive status. [2011 c 10 § 35; 2009 c 369 § 36; 2003 c 111 § 1001. Prior: 2001 c 241 § 1; 1991 c 81 § 29; 1987 c 346 § 9; 1986 c 167 § 14; 1985 c 273 § 1; 1984 c 27 § 1; 1977 ex.s. c 361 § 76; 1974 ex.s. c 35 § 1; 1971 ex.s. c 202 § 37; 1965 c 9 § 29.36.010; prior: 1963 ex.s. c 23 § 1; 1955 c 167 § 2; prior: (i) 1950 ex.s. c 8 § 1; 1943 c 72 § 1; 1933 ex.s. c 41 § 1; 1923 c 58 § 1; 1921 c 143 § 1; 1917 c 159 § 1; 1915 c 189 § 1; Rem. Supp. 1943 § 5280. (ii) 1933 ex.s. c 41 § 2, part; 1923 c 58 § 2, part; 1921 c 143 § 2, part; 1917 c 159 § 2, part; 1915 c 189 § 2, part; RRS § 5281, part. Formerly RCW 29.36.210, 29.36.010.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Legislative intent—1987 c 346: "By this act the legislature intends to combine and unify the laws and procedures governing absentee voting. These amendments are intended: (1) To clarify and incorporate into a single chapter of the Revised Code of Washington the preexisting statutes under which electors of this state qualify for absentee ballots under state law, federal law, or a combination of both state and federal law, and (2) to insure uniformity in the application, issuance, receipt, and canvassing of these absentee ballots. Nothing in this act is intended to impose any new requirement on the ability of the registered voters or electors of this state to qualify for, receive, or cast absentee ballots in any primary or election." [1987 c 346 § 1.]

Additional notes found at www.leg.wa.gov

29A.40.020 Request for ballot from an overseas voter or service voter. (1) A request for a ballot from an overseas voter or service voter must include the address of the last residence in the state of Washington.

(2) No person, organization, or association may distribute any ballot materials that contain a return address other than that of the appropriate county auditor. [2011 c 10 § 36; 2009 c 369 § 37; 2003 c 111 § 1002; 2001 c 241 § 2. Formerly RCW 29.36.220.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.40.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.40.040 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.40.050 Special ballots. (1) County auditors shall provide special absentee ballots to be used for state primary or state general elections. An auditor shall provide a special absentee ballot only to a registered voter who completes an application stating that she or he will be unable to vote and return a regular ballot by normal mail delivery within the period provided for regular ballots.

A special absentee ballot may not be requested more than ninety days before the applicable state primary or general election. The special absentee ballot will list the offices and measures, if known, scheduled to appear on the state primary or general election ballot. The voter may use the special absentee ballot to write in the name of any eligible candidate for each office and vote on any measure.

(2) The county auditor shall include a listing of any candidates who have filed before the time of the application for offices that will appear on the ballot at that primary or election and a list of any issues that have been referred to the ballot before the time of the application.

(3) Write-in votes on special absentee ballots must be counted in the same manner provided by law for the counting of other write-in votes. The county auditor shall process and canvass the special absentee ballots provided under this section in the same manner as other ballots under this chapter and chapter 29A.60 RCW.

(4) A voter who requests a special absentee ballot under this section may also request a regular ballot. If the regular absentee ballot is properly voted and returned, the special absentee ballot is void, and the county auditor shall reject it in whole when special absentee ballots are canvassed. [2011 c 10 § 37; 2003 c 111 § 1005; 2001 c 241 § 5; 1991 c 81 § 35; 1987 c 346 § 21. Formerly RCW 29.36.250, 29.36.170.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

Additional notes found at www.leg.wa.gov

29A.40.061 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.40.070 Date ballots available, mailed. (Effective until January 1, 2012.) (1) Except where a recount or litigation is pending, the county auditor must mail ballots to each voter at least eighteen days before each primary or election, and as soon as possible for all subsequent registration changes.

(2) Except where a recount or litigation is pending, the county auditor must mail ballots to each service and overseas voter at least thirty days before each primary or election. A request for a ballot made by an overseas or service voter after that day must be processed immediately.

(3) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each request for a replacement ballot.

[2011 RCW Supp—page 628]

(4) Each county auditor shall certify to the office of the secretary of state the dates the ballots prescribed in subsection (1) of this section were available and mailed.

(5) Failure to mail ballots as prescribed in this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election. [2011 c 10 § 38; 2006 c 344 § 13; 2004 c 266 § 13. Prior: 2003 c 162 § 2; 2003 c 111 § 1007; prior: 1987 c 54 § 1; 1977 ex.s. c 361 § 56; 1965 ex.s. c 103 § 5; 1965 c 9 § 29.30.075; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.36.270, 29.30.075.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Effective date—2004 c 266: See note following RCW 29A.04.575.

Policy—2003 c 162: "It is the policy of the state of Washington that individuals voting absentee and mail ballots receive their ballots in a timely and consistent manner before each election. Since many voters in Washington state have come to rely upon absentee and mail voting, mailing the ballots in a timely manner is critical in order to maximize participation by every eligible voter." [2003 c 162 § 1.]

Additional notes found at www.leg.wa.gov

29A.40.070 Date ballots mailed. (Effective January 1, 2012.) (1) Except where a recount or litigation is pending, the county auditor must mail ballots to each voter at least eighteen days before each primary or election, and as soon as possible for all subsequent registration changes.

(2) Except where a recount or litigation is pending, the county auditor must mail ballots to each service and overseas voter at least thirty days before each primary election or special election and at least forty-five days before each primary or general election. A request for a ballot made by an overseas or service voter after that day must be processed immediately.

(3) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each request for a replacement ballot.

(4) Each county auditor shall certify to the office of the secretary of state the dates the ballots were mailed, or the reason and date the ballots will be mailed if the ballots were not mailed timely.

(5) Failure to mail ballots as prescribed in this section does not by itself provide a basis for an election contest or other legal challenge to the results of a primary, general election, or special election. [2011 c 349 § 16; 2011 c 10 § 38; 2006 c 344 § 13; 2004 c 266 § 13. Prior: 2003 c 162 § 2; 2003 c 111 § 1007; prior: 1987 c 54 § 1; 1977 ex.s. c 361 § 56; 1965 ex.s. c 103 § 5; 1965 c 9 § 29.30.075; prior: 1949 c 161 § 10, part; 1947 c 234 § 2, part; 1935 c 26 § 1, part; 1921 c 178 § 4, part; 1907 c 209 § 8, part; Rem. Supp. 1949 § 5185, part. Formerly RCW 29.36.270, 29.30.075.]

Reviser's note: This section was amended by 2011 c 10 § 38 and by 2011 c 349 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 349: See note following RCW 29A.04.255.

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Effective date—2004 c 266: See note following RCW 29A.04.575.

Policy—2003 c 162: "It is the policy of the state of Washington that individuals voting absentee and mail ballots receive their ballots in a timely and consistent manner before each election. Since many voters in Washington state have come to rely upon absentee and mail voting, mailing the ballots in a timely manner is critical in order to maximize participation by every eligible voter." [2003 c 162 § 1.]

Additional notes found at www.leg.wa.gov

29A.40.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.40.091 Envelopes, declaration, and instructions (as amended by 2011 c 10). (1) The county auditor shall send each voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, a declaration that the voter must sign, and instructions on how to obtain information about the election, how to mark the ballot, and how to return ~~((it)) the ballot~~ to the county auditor.

(2) ~~The ((instructions that accompany a ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the voter reciting his or her qualifications and stating that he or she)) voter must swear under penalty of perjury that he or she meets the qualifications to vote, and has not voted in any other jurisdiction at this election ((together with a summary of the penalties for any violation of any of the provisions of this chapter)). The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and ((except as otherwise provided by law;)) it is illegal to cast a ballot or sign a return envelope on behalf of another voter. The ((return envelope)) ballot materials must provide space for the voter to indicate the date on which the ballot was voted ((and for the voter)), to sign the ((oath. It must also contain a space so that the voter may include)) declaration, and to provide a telephone number. ((A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope may provide secrecy for the voter's signature and optional telephone number.))~~

(3) For overseas and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. Return envelopes for overseas and service voters must enable the ballot to be returned postage free if mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy under 39 U.S.C. Sec. 3406.

(4) The voter must be instructed to either return the ballot to the county auditor ~~((by whom it was issued or attach sufficient first-class postage, if applicable, and)) no later than 8:00 p.m. the day of the election or primary, or mail the ballot to the ((appropriate)) county auditor with a postmark no later than the day of the election or primary ((for which the ballot was issued)).~~

~~((If the county auditor chooses to forward ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed.)) [2011 c 10 § 39; 2010 c 125 § 1; 2009 c 369 § 39; 2005 c 246 § 21; 2004 c 271 § 135.]~~

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.40.091 Envelopes and instructions (as amended by 2011 c 182). The county auditor shall send each voter a ballot, a security envelope in which to ~~((seal)) conceal~~ the ballot after voting, a larger envelope in which

to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany a ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and, except as otherwise provided by law, it is illegal to cast a ballot or sign a return envelope on behalf of another voter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. It must also contain a space so that the voter may include a telephone number. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope may provide secrecy for the voter's signature and optional telephone number. For overseas and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first-class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

If the county auditor chooses to forward ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed. [2011 c 182 § 1; 2010 c 125 § 1; 2009 c 369 § 39; 2005 c 246 § 21; 2004 c 271 § 135.]

29A.40.091 Envelopes, declaration, and instructions (as amended by 2011 c 348). (1) The county auditor shall send each voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, a declaration that the voter must sign, and instructions on how to obtain information about the election, how to mark the ballot, and how to return ~~((it)) the ballot~~ to the county auditor.

(2) ~~The ((instructions that accompany a ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the voter reciting his or her qualifications and stating that he or she)) voter must swear under penalty of perjury that he or she meets the qualifications to vote, and has not voted in any other jurisdiction at this election ((together with a summary of the penalties for any violation of any of the provisions of this chapter)). The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and ((except as otherwise provided by law;)) it is illegal to cast a ballot or sign a return envelope on behalf of another voter. The ((return envelope must provide space for the)) voter ((to)) must indicate the date on which the ballot was voted and ((for the voter to)) sign the ((oath)) declaration. ((It)) The ballot materials must also contain a space so that the voter may include a telephone number. ((A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope may provide secrecy for the voter's signature and optional telephone number.))~~

(3) For overseas and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. Return envelopes for overseas and service voters must enable the ballot to be returned postage free if mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy under 39 U.S.C. 3406.

(4) The voter must be instructed to either return the ballot to the county auditor ~~((by whom it was issued)) no later than 8:00 p.m. the day of the elec-~~

tion or primary, or ((attach sufficient first-class postage, if applicable, and) mail the ballot to the ((appropriate)) county auditor with a postmark no later than the day of the election or primary ((for which the ballot was issued).

If the county auditor chooses to forward ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed). Service and overseas voters must be provided with instructions and a secrecy cover sheet for returning the ballot and signed declaration by fax or e-mail. A voted ballot and signed declaration returned by fax or e-mail must be received by 8:00 p.m. on the day of the election or primary. [2011 c 349 § 3; 2010 c 125 § 1; 2009 c 369 § 39; 2005 c 246 § 21; 2004 c 271 § 135.]

29A.40.091 Envelopes, declaration, and instructions (as amended by 2011 c 349). (Effective January 1, 2012.) (1) The county auditor shall send each voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, a declaration that the voter must sign, and instructions on how to obtain information about the election, how to mark the ballot, and how to return ((it)) the ballot to the county auditor.

(2) The ((instructions that accompany a ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the voter reciting his or her qualifications and stating that he or she)) voter must swear under penalty of perjury that he or she meets the qualifications to vote, and has not voted in any other jurisdiction at this election((, together with a summary of the penalties for any violation of any of the provisions of this chapter)). The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and ((, except as otherwise provided by law;)) it is illegal to cast a ballot or sign a return envelope on behalf of another voter. The ((return envelope must provide space for the)) voter ((to)) must indicate the date on which the ballot was voted and ((for the voter to)) sign the ((oath)) declaration. ((H)) The ballot materials must also contain a space so that the voter may include a telephone number. ((A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope may provide secrecy for the voter's signature and optional telephone number.))

(3) For overseas and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. Return envelopes for overseas and service voters must enable the ballot to be returned postage free if mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy under 39 U.S.C. 3406.

(4) The voter must be instructed to either return the ballot to the county auditor ((by whom it was issued)) no later than 8:00 p.m. the day of the election or primary, or ((attach sufficient first-class postage, if applicable, and) mail the ballot to the ((appropriate)) county auditor with a postmark no later than the day of the election or primary ((for which the ballot was issued).

If the county auditor chooses to forward ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed). Service and overseas voters must be provided with instructions and a secrecy cover sheet for returning the ballot and signed declaration by fax or e-mail. A voted ballot and signed declaration returned by fax or e-mail must be received by 8:00 p.m. on the day of the election or primary. [2011 c 349 § 3; 2010 c 125 § 1; 2009 c 369 § 39; 2005 c 246 § 21; 2004 c 271 § 135.]

Reviser's note: RCW 29A.40.091 was amended four times during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 c 349: See note following RCW 29A.04.255.

Effective date—2005 c 246: See note following RCW 10.64.140.

29A.40.100 Observers. County auditors must request that observers be appointed by the major political parties to be present during the processing of ballots at the counting center. County auditors have discretion to also request that observers be appointed by any campaigns or organizations. The absence of the observers will not prevent the processing of ballots if the county auditor has requested their presence. [2011 c 10 § 40; 2003 c 111 § 1010. Prior: 2001 c 241 § 9. Formerly RCW 29.36.300.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.40.110 Processing incoming ballots. (Effective until January 1, 2012.) (1) The opening and subsequent processing of return envelopes for any primary or election may begin upon receipt. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) All received return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening. After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until processing. Ballots may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) The canvassing board, or its designated representatives, shall examine the postmark on the return envelope and signature on the declaration before processing the ballot. The ballot must either be received no later than 8:00 p.m. on the day of the primary or election, or must be postmarked no later than the day of the primary or election. All personnel assigned to verify signatures must receive training on statewide standards for signature verification. Personnel shall verify that the voter's signature on the ballot declaration is the same as the signature of that voter in the registration files of the county. Verification may be conducted by an automated verification system approved by the secretary of state. A variation between the signature of the voter on the ballot declaration and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.

(4) If the postmark is missing or illegible, the date on the ballot declaration to which the voter has attested determines the validity, as to the time of voting, for that ballot. For overseas voters and service voters, the date on the declaration to which the voter has attested determines the validity, as to the time of voting, for that ballot. Any overseas voter or service voter may return the signed declaration and voted ballot by fax or e-mail by 8:00 p.m. on the day of the primary or election, and the county auditor must use established procedures to maintain the secrecy of the ballot. [2011 c 348 § 4; 2011 c 10 § 41; 2009 c 369 § 40. Prior: 2006 c 207 § 4; 2006 c 206 § 6; 2005 c 243 § 5; 2003 c 111 § 1011; prior: 2001 c 241 § 10; 1991 c 81 § 32; 1987 c 346 § 14; 1977 ex.s. c 361 § 78; 1973 c 140 § 1; 1965 c 9 § 29.36.060; prior: 1963 ex.s. c 23 § 5; 1955 c 167 § 7; 1955 c 50 § 2; prior: 1933 ex.s. c 41 § 5, part; 1921 c 143 § 6, part; 1917 c 159 § 4, part; 1915 c 189 §

4, part; RRS § 5285, part. Formerly RCW 29.36.310, 29.36.060.]

Reviser's note: This section was amended by 2011 c 10 § 41 and by 2011 c 348 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

County canvassing board, meeting to process absentee ballots, canvass returns: RCW 29A.60.160.

Unsigned absentee or provisional ballots: RCW 29A.60.165.

Additional notes found at www.leg.wa.gov

29A.40.110 Processing incoming ballots. (Effective January 1, 2012.) (1) The opening and subsequent processing of return envelopes for any primary or election may begin upon receipt. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) All received return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening. After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until processing. Ballots may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) The canvassing board, or its designated representatives, shall examine the postmark on the return envelope and signature on the declaration before processing the ballot. The ballot must either be received no later than 8:00 p.m. on the day of the primary or election, or must be postmarked no later than the day of the primary or election. All personnel assigned to verify signatures must receive training on statewide standards for signature verification. Personnel shall verify that the voter's signature on the ballot declaration is the same as the signature of that voter in the registration files of the county. Verification may be conducted by an automated verification system approved by the secretary of state. A variation between the signature of the voter on the ballot declaration and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.

(4) If the postmark is missing or illegible, the date on the ballot declaration to which the voter has attested determines the validity, as to the time of voting, for that ballot. For overseas voters and service voters, the date on the declaration to which the voter has attested determines the validity, as to the time of voting, for that ballot. Any overseas voter or service voter may return the signed declaration and voted ballot by fax or e-mail by 8:00 p.m. on the day of the primary or election, and the county auditor must use established procedures to maintain the secrecy of the ballot. [2011 c 349 § 18; 2011 c 348 § 4; 2011 c 10 § 41; 2009 c 369 § 40. Prior: 2006 c 207 § 4; 2006 c 206 § 6; 2005 c 243 § 5; 2003 c 111 § 1011; prior: 2001 c 241 § 10; 1991 c 81 § 32; 1987 c 346 § 14; 1977 ex.s. c 361 § 78; 1973 c 140 § 1; 1965 c 9 § 29.36.060; prior: 1963 ex.s. c 23 § 5; 1955 c 167 § 7; 1955 c 50 § 2; prior: 1933 ex.s.

c 41 § 5, part; 1921 c 143 § 6, part; 1917 c 159 § 4, part; 1915 c 189 § 4, part; RRS § 5285, part. Formerly RCW 29.36.310, 29.36.060.]

Reviser's note: This section was amended by 2011 c 10 § 41, 2011 c 348 § 4, and by 2011 c 349 § 18, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 349: See note following RCW 29A.04.255.

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

County canvassing board, meeting to process ballots, canvass returns: RCW 29A.60.160.

Unsigned ballot declarations: RCW 29A.60.165.

Additional notes found at www.leg.wa.gov

29A.40.120 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.40.130 Record of voters issued a ballot and voters who returned a ballot—Public access. Each county auditor shall maintain in his or her office, open for public inspection, a record of all voters issued a ballot and all voters who returned a ballot. For each primary, special election, or general election, any political party, committee, or person may request a list of all registered voters who have or have not voted. Such requests shall be handled as public records requests pursuant to chapter 42.56 RCW. [2011 c 10 § 42; 2003 c 111 § 1013. Prior: 1991 c 81 § 33; 1987 c 346 § 17; 1973 1st ex.s. c 61 § 1. Formerly RCW 29.36.340, 29.36.097.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

Additional notes found at www.leg.wa.gov

29A.40.140 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.40.150 Repealed. (Effective January 1, 2012.) See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.40.160 Voting centers. (1) Each county auditor shall open a voting center each primary, special election, and general election. The voting center shall be open during business hours during the voting period, which begins eighteen days before, and ends at 8:00 p.m. on the day of, the primary, special election, or general election.

(2) The voting center must provide voter registration materials, ballots, provisional ballots, disability access voting units, sample ballots, instructions on how to properly vote the ballot, a ballot drop box, and voters' pamphlets, if a voters' pamphlet has been published.

(3) The voting center must be accessible to persons with disabilities. Each state agency and entity of local government shall permit the use of any of its accessible facilities as voting centers when requested by a county auditor.

(4) The voting center must provide at least one voting unit certified by the secretary of state that provides access to individuals who are blind or visually impaired, enabling them to vote with privacy and independence.

(5) No person may interfere with a voter attempting to vote in a voting center. Interfering with a voter attempting to vote is a violation of RCW 29A.84.510.

(6) Before opening the voting center, the voting equipment shall be inspected to determine if it has been properly prepared for voting. If the voting equipment is capable of direct tabulation of each voter's choices, the county auditor shall verify that no votes have been registered for any issue or office, and that the device has been sealed with a unique numbered seal at the time of final preparation and logic and accuracy testing. A log must be made of all device numbers and seal numbers.

(7) The county auditor shall require any person desiring to vote at a voting center to either sign a ballot declaration or provide identification.

(a) The signature on the declaration must be compared to the signature on the voter registration record before the ballot may be counted. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter.

(b) The identification must be valid photo identification, such as a driver's license, state identification card, student identification card, tribal identification card, or employer identification card. Any individual who desires to vote in person but cannot provide identification shall be issued a provisional ballot, which shall be accepted if the signature on the declaration matches the signature on the voter's registration record.

(8) Provisional ballots must be accompanied by a declaration and security envelope, as required by RCW 29A.40.091, and space for the voter's name, date of birth, current and former registered address, reason for the provisional ballot, and disposition of the provisional ballot. The voter shall vote and return the provisional ballot at the voting center. The voter must be provided information on how to ascertain whether the provisional ballot was counted and, if applicable, the reason why the vote was not counted.

(9) Any voter may take printed or written material into the voting device to assist in casting his or her vote. The voter shall not use this material to electioneer and shall remove it when he or she leaves the voting center.

(10) If any voter states that he or she is unable to cast his or her votes due to a disability, the voter may designate a person of his or her choice, or two election officers, to enter the voting booth and record the votes as he or she directs.

(11) No voter is entitled to vote more than once at a primary, special election, or general election. If a voter incorrectly marks a ballot, he or she may be issued a replacement ballot.

(12) A voter who has already returned a ballot but requests to vote at a voting center shall be issued a provisional ballot. The canvassing board shall not count the provisional ballot if it finds that the voter has also voted a regular ballot in that primary, special election, or general election.

(13) The county auditor must prevent overflow of each ballot drop box to allow a voter to deposit his or her ballot securely. Ballots must be removed from a ballot drop box by

at least two people, with a record kept of the date and time ballots were removed, and the names of people removing them. Ballots from drop boxes must be returned to the counting center in secured transport containers. A copy of the record must be placed in the container, and one copy must be transported with the ballots to the counting center, where the seal number must be verified by the county auditor or a designated representative. All ballot drop boxes must be secured at 8:00 p.m. on the day of the primary, special election, or general election.

(14) Any voter who is inside or in line at the voting center at 8:00 p.m. on the day of the primary, special election, or general election must be allowed to vote.

(15) For each primary, special election, and general election, the county auditor may provide election services at locations in addition to the voting center. The county auditor has discretion to establish which services will be provided at the additional locations, and which days and hours the locations will be open. [2011 c 10 § 43.]

Reviser's note: This section was directed to be codified in chapter 29A.44 RCW, but placement in chapter 29A.40 RCW appears to be more appropriate.

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Chapter 29A.44 RCW POLLING PLACE ELECTIONS AND POLL WORKERS

Sections

29A.44.010 through 29A.44.530 Repealed.

29A.44.010 through 29A.44.530 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 29A.46 RCW DISABILITY ACCESS VOTING

Sections

29A.46.010 through 29A.46.130 Repealed.
29A.46.260 Recodified as RCW 29A.04.223.

29A.46.010 through 29A.46.130 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.46.260 Recodified as RCW 29A.04.223. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 29A.48 RCW VOTING BY MAIL

Sections

29A.48.010 through 29A.48.060 Repealed.

29A.48.010 through 29A.48.060 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Chapter 29A.52 RCW
PRIMARIES AND ELECTIONS

Sections

- 29A.52.311 Repealed.
- 29A.52.351 Repealed.
- 29A.52.355 Notice of election—Prior to mail-in registration deadline.

29A.52.311 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.52.351 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.52.355 Notice of election—Prior to mail-in registration deadline. Notice for any state, county, district, or municipal primary or election, whether special or general, must be given by the county auditor between five and fifteen days prior to the deadline for mail-in registrations. The notice must be published in one or more newspapers of general circulation and must contain, at a minimum, the last date to register online or through the mail, the last date to transfer or update an existing registration, the last date to register in person for first-time voters, information on where a person can register, the type of election, the date of the election, how a voter can obtain a ballot, a list of all jurisdictions involved in the election, including positions and short titles for ballot measures appearing on the ballot, and the times and dates of any public meetings associated with the election. The notice shall also include where additional information regarding the election may be obtained. This is the only notice required for a state, county, district, or municipal primary or special or general election. If the county or city chooses to mail a local voters' pamphlet as described in RCW 29A.32.210 to each residence, the notice required in this section need only include the last date to register online or through the mail, the last date to transfer or update an existing registration, the last date to register in person for first-time voters, information on where a person can register, and the times and dates of any public meetings associated with the election. [2011 c 10 § 45.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Chapter 29A.56 RCW
SPECIAL CIRCUMSTANCES ELECTIONS

Sections

- 29A.56.020 Date. (*Effective until January 1, 2013.*)
- 29A.56.030 Ballot—Names included. (*Effective January 1, 2012.*)
- 29A.56.490 Election of delegates—Ascertaining result.

29A.56.020 Date. (*Effective until January 1, 2013.*)
(1) On the fourth Tuesday in May of each year in which a president of the United States is to be nominated and elected, a presidential primary shall be held at which voters may vote for the nominee of a major political party for the office of president. The secretary of state may propose an alternative date for the primary no later than the first day of August of the year before the year in which a president is to be nominated and elected.

(2) No later than the first day of September of the year before the year in which a presidential nominee is selected, the state committee of any major political party that will use the primary results for candidates of that party may propose an alternative date for that primary.

(3) If an alternative date is proposed under subsection (1) or (2) of this section, a committee consisting of the chair and the vice-chair of the state committee of each major political party, the secretary of state, the majority leader and minority leader of the senate, and the speaker and the minority leader of the house of representatives shall meet and, if affirmed by a two-thirds vote of the members of the committee, the date of the primary shall be changed. The committee shall meet and decide on the proposed alternate date not later than the first day of October of the year before the year in which a presidential nominee is selected. The secretary of state shall convene and preside over the meeting of the committee. A committee member other than a legislator may appoint, in writing, a designee to serve on his or her behalf. A legislator who is a member of the committee may appoint, in writing, another legislator to serve on his or her behalf.

(4) If an alternate date is approved under this section, the secretary of state shall adopt rules under RCW 29A.04.620 to adjust the deadlines in RCW 29A.56.030 and related provisions of this chapter to correspond with the date that has been approved.

(5) No presidential primary may be held in 2012. [2011 c 319 § 1; 2003 c 111 § 1402; (2003 3rd sp.s. c 1 § 2 expired January 1, 2005); (2003 3rd sp.s. c 1 § 1 expired July 1, 2004). Prior: 1995 1st sp.s. c 20 § 1; 1989 c 4 § 2 (Initiative Measure No. 99). Formerly RCW 29.19.020.]

Expiration date—2011 c 319: "Section 1 of this act expires January 1, 2013." [2011 c 319 § 2.]

Effective date—2003 3rd sp.s. c 1 § 2: "Section 2 of this act takes effect July 1, 2004." [2003 3rd sp.s. c 1 § 5.]

Expiration date—2003 3rd sp.s. c 1 § 2: "Section 2 of this act expires January 1, 2005." [2003 3rd sp.s. c 1 § 6.]

Expiration date—2003 3rd sp.s. c 1 § 1: "Section 1 of this act expires July 1, 2004." [2003 3rd sp.s. c 1 § 4.]

Effective date—2003 3rd sp.s. c 1 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [December 9, 2003]." [2003 3rd sp.s. c 1 § 3.]

Additional notes found at www.leg.wa.gov

29A.56.030 Ballot—Names included. (*Effective January 1, 2012.*) The name of any candidate for a major political party nomination for president of the United States shall be printed on the presidential preference primary ballot of a major political party only:

(1) By direction of the secretary of state, who in the secretary's sole discretion has determined that the candidate's candidacy is generally advocated or is recognized in national news media; or

(2) If members of the political party of the candidate have presented a petition for nomination of the candidate that has attached to the petition a sheet or sheets containing the signatures of at least one thousand registered voters who declare themselves in the petition as being affiliated with the same political party as the presidential candidate. The petition shall be filed with the secretary of state not later than seventy-five days before the presidential preference primary.

The signature sheets shall also contain the residence address and name or number of the precinct of each registered voter whose signature appears thereon and shall be certified in the manner prescribed in RCW 29A.72.230 and 29A.72.240.

The secretary of state shall place the name of the candidate on the ballot unless the candidate, at least sixty-seven days before the presidential preference primary, executes and files with the secretary of state an affidavit stating without qualification that he or she is not now and will not become a candidate for the office of president of the United States at the forthcoming presidential election. The secretary of state shall certify the names of all candidates who will appear on the presidential preference primary ballot to the respective county auditors on or before the fourth Tuesday in April of each presidential election year. [2011 c 349 § 19; 2006 c 344 § 15; 2003 c 111 § 1403. Prior: 1989 c 4 § 3 (Initiative Measure No. 99). Formerly RCW 29.19.030.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

29A.56.490 Election of delegates—Ascertaining result. The election officials shall count and determine the number of votes cast for each individual; and shall also count and determine the aggregate number of votes cast for all candidates whose names appear under each of the respective headings. Where more than the required number have been voted for, the ballot must be rejected. The vote must be canvassed in each county by the county canvassing board, and certificate of results must within fifteen days after the election be transmitted to the secretary of state. Upon receiving the certificate, the secretary of state may require precinct returns from any county to be forwarded for the secretary's examination.

Where a district embraces precincts of more than one county, the secretary of state shall combine the votes from all the precincts included in each district. The delegates elected in each district will be the number of candidates corresponding to the number of state representatives from the district, who receive the highest number of votes in the group (either "for" or "against") that received an aggregate number of votes for all candidates in the group greater than the aggregate number of votes for all the candidates in the other group. The secretary of state shall issue certificates of election to the delegates so elected. [2011 c 10 § 46; 2003 c 111 § 1438; 1965 c 9 § 29.74.100. Prior: 1933 c 181 § 6; RRS § 5249-6. Formerly RCW 29.74.100.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Chapter 29A.60 RCW CANVASSING

Sections

- 29A.60.030 Repealed.
- 29A.60.040 Rejection of ballots or parts—Write-in votes.
- 29A.60.050 Questions on validity of ballot—Rejection—Preservation and return.
- 29A.60.060 Results after close of voting centers.
- 29A.60.080 Repealed.
- 29A.60.110 Ballot containers, sealing, opening.
- 29A.60.120 Counting ballots—Official returns.

[2011 RCW Supp—page 634]

- 29A.60.160 Ballots—Processing, canvassing. (*Effective until July 1, 2013.*)
- 29A.60.160 Ballots—Processing, canvassing. (*Effective July 1, 2013.*)
- 29A.60.165 Unsigned ballot declarations.
- 29A.60.170 List of observers—Counting center, direction and observation of proceedings—Manual count of certain precincts.
- 29A.60.180 Credit for voting.
- 29A.60.190 Certification of election results—Unofficial returns. (*Effective until January 1, 2012.*)
- 29A.60.190 Certification of election results. (*Effective January 1, 2012, until July 1, 2013.*)
- 29A.60.190 Certification of election results. (*Effective July 1, 2013.*)
- 29A.60.195 Provisional ballots—Disposition.
- 29A.60.200 Canvassing board—Canvassing procedure—Penalty.
- 29A.60.230 Abstract by election officer—Transmittal to secretary of state.
- 29A.60.235 Certification reports.
- 29A.60.240 Secretary of state—Primary returns—State offices, etc. (*Effective January 1, 2012.*)

29A.60.030 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.60.040 Rejection of ballots or parts—Write-in votes. A ballot is invalid and no votes on that ballot may be counted if it is found folded together with another ballot.

Those parts of a ballot are invalid and no votes may be counted for those issues or offices where more votes are cast for the office or issue than are permitted by law; write-in votes do not contain all of the information required under RCW 29A.60.021; or that issue or office is not marked with sufficient definiteness to determine the voter's choice or intention. No write-in vote may be rejected due to a variation in the form of the name if the canvassing board can determine the issue for or against which or the person and the office for which the voter intended to vote. [2011 c 10 § 47; 2009 c 414 § 2; 2003 c 111 § 1504. Prior: 1999 c 158 § 13; 1999 c 157 § 4; 1990 c 59 § 56; 1977 ex.s. c 361 § 88; 1973 1st ex.s. c 121 § 2; 1965 ex.s. c 101 § 11; 1965 c 9 § 29.54.050; prior: (i) Code 1881 § 3091; 1865 p 38 § 2; RRS § 5336. (ii) 1895 c 156 § 10; 1889 p 411 § 29; RRS § 5294. (iii) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. (iv) 1895 c 156 § 11, part; 1886 p 128 § 1, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5323, part. Formerly RCW 29.54.050.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Additional notes found at www.leg.wa.gov

29A.60.050 Questions on validity of ballot—Rejection—Preservation and return. Whenever the counting center personnel have a question about the validity of a ballot or the votes for an office or issue that they are unable to resolve, they shall prepare and sign a concise record of the facts in question or dispute. These ballots shall be delivered to the canvassing board for processing. A ballot is not considered rejected until the canvassing board has rejected the ballot individually, or the ballot was included in a batch or on a report of ballots that was rejected in its entirety by the canvassing board. All ballots shall be preserved in the same manner as valid ballots for that primary or election. [2011 c 10 § 48; 2005 c 243 § 13; 2003 c 111 § 1505. Prior: 1990 c 59 § 57; 1977 ex.s. c 361 § 89; 1965 c 9 § 29.54.060; prior: Code 1881 § 3080, part; 1865 p 34 § 5, part; RRS § 5324, part. Formerly RCW 29.54.060.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Additional notes found at www.leg.wa.gov

29A.60.060 Results after close of voting centers.

After the close of the voting center at 8:00 p.m., the county auditor must directly load the results from any direct recording electronic memory pack into the central accumulator. [2011 c 10 § 49; 2003 c 111 § 1506. Prior: 1999 c 158 § 12. Formerly RCW 29.54.097.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.60.080 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.60.110 Ballot containers, sealing, opening.

Immediately after their tabulation, all ballots counted at a ballot counting center must be sealed in containers that identify the primary or election and be retained for at least sixty days or according to federal law, whichever is longer.

In the presence of major party observers who are available, ballots may be removed from the sealed containers at the elections department and consolidated into one sealed container for storage purposes. The containers may only be opened by the canvassing board as part of the canvass, or to conduct recounts, or under *RCW 29A.60.170(3), or by order of the superior court in a contest or election dispute. If the canvassing board opens a ballot container, it shall make a full record of the additional tabulation or examination made of the ballots. This record must be added to any other record of the canvassing process in that county. [2011 c 10 § 50; 2003 c 111 § 1511; 1999 c 158 § 14; 1990 c 59 § 59. Formerly RCW 29.54.075.]

***Reviser's note:** RCW 29A.60.170 was amended by 2011 c 10 § 55, deleting subsection (3).

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

29A.60.120 Counting ballots—Official returns.

(1) All voted ballots must be manually inspected for damage, write-in votes, and incorrect or incomplete marks. If it is found that any ballot is damaged so that it cannot properly be counted by the vote tallying system, a true duplicate copy must be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. All damaged ballots must be kept by the county auditor until sixty days after the primary or election or according to federal law, whichever is longer.

(2) The returns produced by the vote tallying system, to which have been added the counts of questioned ballots, and write-in votes, constitute the official returns of the primary or election in that county. [2011 c 10 § 51; 2003 c 111 § 1512; 1999 c 158 § 15; 1990 c 59 § 33; 1977 ex.s. c 361 § 74. Formerly RCW 29.54.085, 29.34.167.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Additional notes found at www.leg.wa.gov

29A.60.160 Ballots—Processing, canvassing. (Effective until July 1, 2013.) (1) Except for an election conducted under the instant runoff voting method for the pilot project authorized by RCW 29A.53.020, the county auditor, as delegated by the county canvassing board, shall process ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a population of less than seventy-five thousand, if the county auditor is in possession of more than five hundred ballots that have yet to be canvassed.

(2) Saturdays, Sundays, and legal holidays are not counted for purposes of this section.

(3) In order to protect the secrecy of a ballot, the county auditor may use discretion to decide when to process absentee ballots and canvass the votes.

(4) Tabulation results must be made available to the public immediately upon completion of the canvass. [2011 c 10 § 52; 2007 c 373 § 1. Prior: 2005 c 243 § 15; 2005 c 153 § 11; 2003 c 111 § 1516; 1999 c 259 § 4; 1995 c 139 § 2; 1987 c 54 § 2; 1965 c 9 § 29.62.020; prior: 1957 c 195 § 15; prior: 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. Formerly RCW 29.62.020.]

Expiration date—2011 c 10 §§ 52 and 57: "Sections 52 and 57 of this act expire July 1, 2013." [2011 c 10 § 89.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Expiration date—2007 c 373 § 1: "Section 1 of this act expires July 1, 2013." [2007 c 373 § 4.]

Expiration date—2005 c 153 §§ 11 and 12: "Sections 11 and 12 of this act expire July 1, 2013." [2005 c 153 § 14.]

Captions not law—Severability—2005 c 153: See RCW 29A.53.901 and 29A.53.902.

Absentee ballots, canvassing: RCW 29A.40.110.

29A.60.160 Ballots—Processing, canvassing. (Effective July 1, 2013.) (1) The county auditor, as delegated by the county canvassing board, shall process ballots and canvass the votes cast at that primary or election on a daily basis in counties with a population of seventy-five thousand or more, or at least every third day for counties with a population of less than seventy-five thousand, if the county auditor is in possession of more than five hundred ballots that have yet to be canvassed.

(2) Saturdays, Sundays, and legal holidays are not counted for purposes of this section.

(3) In order to protect the secrecy of a ballot, the county auditor may use discretion to decide when to process absentee ballots and canvass the votes.

(4) Tabulation results must be made available to the public immediately upon completion of the canvass. [2011 c 10 § 53; 2007 c 373 § 2; 2005 c 243 § 15; 2003 c 111 § 1516; 1999 c 259 § 4; 1995 c 139 § 2; 1987 c 54 § 2; 1965 c 9 § 29.62.020. Prior: 1957 c 195 § 15; prior: 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. Formerly RCW 29.62.020.]

Effective date—2011 c 10 §§ 53 and 58: "Sections 53 and 58 of this act take effect July 1, 2013." [2011 c 10 § 88.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2007 c 373 § 2: "Section 2 of this act takes effect July 1, 2013." [2007 c 373 § 5.]

Absentee ballots, canvassing: RCW 29A.40.110.

29A.60.165 Unsigned ballot declarations. (1) If the voter neglects to sign the ballot declaration, the auditor shall notify the voter by first-class mail and advise the voter of the correct procedures for completing the unsigned declaration. If the ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information.

(2)(a) If the handwriting of the signature on a ballot declaration is not the same as the handwriting of the signature on the registration file, the auditor shall notify the voter by first-class mail, enclosing a copy of the declaration, and advise the voter of the correct procedures for updating his or her signature on the voter registration file. If the ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first-class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information.

(b) If the signature on a ballot declaration is not the same as the signature on the registration file because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(c) If the signature on a ballot declaration is not the same as the signature on the registration file because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(3) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(4) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request. [2011 c 10 § 54. Prior: 2006 c 209 § 4; 2006 c 208 § 1; 2005 c 243 § 8.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2006 c 209: See RCW 42.56.903.

29A.60.170 List of observers—Counting center, direction and observation of proceedings—Manual count of certain precincts. (1) At least twenty-eight days prior to any special election, general election, or primary, the county auditor shall request from the chair of the county central committee of each major political party a list of individuals who

are willing to serve as observers. The county auditor has discretion to also request observers from any campaign or organization. The county auditor may delete from the lists names of those persons who indicate to the county auditor that they cannot or do not wish to serve as observers, and names of those persons who, in the judgment of the county auditor, lack the ability to properly serve as observers after training has been made available to them by the auditor.

(2) The counting center is under the direction of the county auditor and must be open to observation by one representative from each major political party, if representatives have been appointed by the respective major political parties and these representatives are present while the counting center is operating. The proceedings must be open to the public, but no persons except those employed and authorized by the county auditor may touch any ballot or ballot container or operate a vote tallying system.

(3) A random check of the ballot counting equipment may be conducted upon mutual agreement of the political party observers or at the discretion of the county auditor. The random check procedures must be adopted by the county canvassing board prior to the processing of ballots. The random check process shall involve a comparison of a manual count to the machine count and may involve up to either three precincts or six batches depending on the ballot counting procedures in place in the county. The random check will be limited to one office or issue on the ballots in the precincts or batches that are selected for the check. The selection of the precincts or batches to be checked must be selected according to procedures established by the county canvassing board and the check must be completed no later than forty-eight hours after election day. [2011 c 10 § 55; 2007 c 373 § 3; 2003 c 111 § 1517; 1999 c 158 § 9; 1990 c 59 § 30; 1977 ex.s. c 361 § 71. Formerly RCW 29.54.025, 29.34.153.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Additional notes found at www.leg.wa.gov

29A.60.180 Credit for voting. Each registered voter casting a valid ballot will be credited with voting on his or her voter registration record. [2011 c 10 § 56; 2003 c 111 § 1518. Prior: 2001 c 241 § 12; 1988 c 181 § 3; 1987 c 346 § 16; 1983 c 136 § 1; 1965 c 9 § 29.36.075; prior: 1961 c 78 § 1. Formerly RCW 29.36.330, 29.36.075.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

29A.60.190 Certification of election results—Unofficial returns. (Effective until January 1, 2012.) (1) Except as provided by subsection (3) of this section, fifteen days after a primary or special election and twenty-one days after a general election, the county canvassing board shall complete the canvass and certify the results. Each ballot that was returned before 8:00 p.m. on the day of the special election, generation election, or primary, and each ballot bearing a postmark on or before the date of the special election, general election, or primary and received on or before the date on

which the primary or election is certified, must be included in the canvass report.

(2) At the request of a caucus of the state legislature, the county auditor shall transmit copies of all unofficial returns of state and legislative primaries or elections prepared by or for the county canvassing board to either the secretary of the senate or the chief clerk of the house of representatives.

(3) On or before the thirtieth day after an election conducted under the instant runoff voting method for the pilot project authorized by RCW 29A.53.020, the canvassing board shall complete the canvass and certify the results. [2011 c 10 § 57; 2006 c 344 § 16. Prior: 2005 c 243 § 16; 2005 c 153 § 12; 2004 c 266 § 18; 2003 c 111 § 1519.]

Expiration date—2011 c 10 §§ 52 and 57: See note following RCW 29A.60.160.

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Expiration date—2006 c 344 § 16: "Section 16 of this act expires July 1, 2013." [2006 c 344 § 42.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Expiration date—2005 c 153 §§ 11 and 12: See note following RCW 29A.60.160.

Captions not law—Severability—2005 c 153: See RCW 29A.53.901 and 29A.53.902.

Effective date—2004 c 266: See note following RCW 29A.04.575.

29A.60.190 Certification of election results. (Effective January 1, 2012, until July 1, 2013.) (1) Except as provided by subsection (2) of this section, fourteen days after a primary or special election and twenty-one days after a general election, the county canvassing board shall complete the canvass and certify the results. The county canvassing board must complete the canvass and certify the results of the April 17, 2012, special election ten days after election day. Each ballot that was returned before 8:00 p.m. on the day of the special election, general election, or primary, and each ballot bearing a postmark on or before the date of the special election, general election, or primary and received no later than the day before certification, must be included in the canvass report.

(2) On or before the thirtieth day after an election conducted under the instant runoff voting method for the pilot project authorized by RCW 29A.53.020, the canvassing board shall complete the canvass and certify the results. [2011 c 349 § 20; 2011 c 10 § 57; 2006 c 344 § 16. Prior: 2005 c 243 § 16; 2005 c 153 § 12; 2004 c 266 § 18; 2003 c 111 § 1519.]

Reviser's note: This section was amended by 2011 c 10 § 57 and by 2011 c 349 § 20, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—2011 c 349 § 20: "Section 20 of this act expires July 1, 2013." [2011 c 349 § 32.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Expiration date—2011 c 10 §§ 52 and 57: See note following RCW 29A.60.160.

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Expiration date—2006 c 344 § 16: "Section 16 of this act expires July 1, 2013." [2006 c 344 § 42.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Expiration date—2005 c 153 §§ 11 and 12: See note following RCW 29A.60.160.

Captions not law—Severability—2005 c 153: See RCW 29A.53.901 and 29A.53.902.

Effective date—2004 c 266: See note following RCW 29A.04.575.

29A.60.190 Certification of election results. (Effective July 1, 2013.) Fourteen days after a primary or special election and twenty-one days after a general election, the county canvassing board shall complete the canvass and certify the results. Each ballot that was returned before 8:00 p.m. on the day of the special election, general election, or primary, and each ballot bearing a postmark on or before the date of the special election, general election, or primary and received no later than the day before certification, must be included in the canvass report. [2011 c 349 § 21; 2011 c 10 § 58; 2006 c 344 § 17; 2005 c 243 § 16; 2004 c 266 § 18; 2003 c 111 § 1519.]

Reviser's note: This section was amended by 2011 c 10 § 58 and by 2011 c 349 § 21, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 349 § 21: "Section 21 of this act takes effect July 1, 2013." [2011 c 349 § 31.]

Effective date—2011 c 10 §§ 53 and 58: See note following RCW 29A.60.160.

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2006 c 344 § 17: "Section 17 of this act takes effect July 1, 2013." [2006 c 344 § 43.]

Effective date—2004 c 266: See note following RCW 29A.04.575.

29A.60.195 Provisional ballots—Disposition. Before certification of the primary or election, the county auditor must examine and investigate all received provisional ballots to determine whether the ballot can be counted. The auditor shall provide the disposition of the provisional ballot and, if the ballot was not counted, the reason why it was not counted, on a free access system such as a toll-free telephone number, web site, mail, or other means. The auditor must notify the voter in accordance with RCW 29A.60.165 when the declaration is unsigned or when the signatures do not match. [2011 c 10 § 59; 2005 c 243 § 9.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.60.200 Canvassing board—Canvassing procedure—Penalty. Before canvassing the returns of a primary or election, the chair of the county legislative authority or the chair's designee shall administer an oath to the county auditor or the auditor's designee attesting to the authenticity of the information presented to the canvassing board. This oath must be signed by the county auditor or designee and filed with the returns of the primary or election.

The county canvassing board shall proceed to verify the results from the ballots received. The board shall execute a certificate of the results of the primary or election signed by all members of the board or their designees. Failure to certify the returns, if they can be ascertained with reasonable certainty, is a crime under RCW 29A.84.720. [2011 c 10 § 60;

2003 c 111 § 1520; 1990 c 59 § 63; 1965 c 9 § 29.62.040. Prior: 1957 c 195 § 17; prior: (i) 1919 c 163 § 21, part; Code 1881 § 3095, part; 1868 p 20 § 1, part; 1865 p 39 § 6, part; RRS § 5340, part. (ii) 1893 c 112 § 2; RRS § 5342. (iii) 1903 c 85 § 1, part; Code 1881 § 3094, part; 1865 p 38 § 4, part; RRS § 5339, part. Formerly RCW 29.62.040.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

29A.60.230 Abstract by election officer—Transmittal to secretary of state. Immediately after the official results of a state primary or general election in a county are ascertained, the county auditor or other election officer shall make an abstract of the number of registered voters in each precinct and of all the votes cast in the county at such state primary or general election for and against state measures and for each candidate for federal, state, and legislative office or for any other office which the secretary of state is required by law to canvass. The cumulative report of the election and a copy of the certificate of the election must be transmitted to the secretary of state immediately. The county auditor or other election official may aggregate results from more than one precinct if the auditor, pursuant to rules adopted by the secretary of state, finds that reporting a single precinct's ballot results would jeopardize the secrecy of a person's ballot. To the extent practicable, precincts for which results are aggregated must be contiguous. [2011 c 10 § 61; 2003 c 111 § 1523; 2001 c 225 § 2; 1999 c 298 § 21; 1990 c 262 § 1; 1977 ex.s. c 361 § 96; 1965 c 9 § 29.62.090. Prior: (i) 1895 c 156 § 12; Code 1881 § 3101; 1865 p 40 § 12; RRS § 5346. (ii) Code 1881 § 3103; 1865 p 41 § 14; RRS § 5348. Formerly RCW 29.62.090.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Additional notes found at www.leg.wa.gov

29A.60.235 Certification reports. The county auditor shall prepare, make publicly available at the auditor's office or on the auditor's web site, and submit at the time of certification an election reconciliation report that discloses the following information:

- (1) The number of registered voters;
- (2) The number of ballots issued;
- (3) The number of ballots received;
- (4) The number of ballots counted;
- (5) The number of ballots rejected;
- (6) The number of provisional ballots issued;
- (7) The number of provisional ballots received;
- (8) The number of provisional ballots counted;
- (9) The number of provisional ballots rejected;
- (10) The number of federal write-in ballots received;
- (11) The number of federal write-in ballots counted;
- (12) The number of federal write-in ballots rejected;
- (13) The number of overseas and service ballots issued;
- (14) The number of overseas and service ballots received;
- (15) The number of overseas and service ballots counted;
- (16) The number of overseas and service ballots rejected;
- (17) The number of voters credited with voting; and

(18) Any other information the auditor or secretary of state deems necessary to reconcile the number of ballots counted with the number of voters credited with voting. [2011 c 10 § 62; 2009 c 369 § 41; 2005 c 243 § 11.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.60.240 Secretary of state—Primary returns—State offices, etc. (Effective January 1, 2012.) The secretary of state shall, as soon as possible but in any event not later than seventeen days following the primary, canvass and certify the returns of all primary elections as to candidates for state offices, United States senators and representatives in Congress, and all other candidates whose district extends beyond the limits of a single county. [2011 c 349 § 22; 2003 c 111 § 1524; 1977 ex.s. c 361 § 97; 1965 c 9 § 29.62.100. Prior: 1961 c 130 § 11; prior: 1907 c 209 § 24, part; RRS § 5201, part. Formerly RCW 29.62.100.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Additional notes found at www.leg.wa.gov

Chapter 29A.64 RCW RECOUNTS

Sections

- 29A.64.011 Application—Requirements—Application of chapter. (*Effective January 1, 2012.*)
- 29A.64.030 Deposit of fees—Notice—Public proceeding. (*Effective January 1, 2012.*)
- 29A.64.041 Procedure—Request to stop—Observers.

29A.64.011 Application—Requirements—Application of chapter. (Effective January 1, 2012.) An officer of a political party or any person for whom votes were cast in a primary who did not qualify for the general election may file a written application for a recount of the votes or a portion of the votes cast at that primary for all persons for whom votes were cast for that office.

An officer of a political party or any person for whom votes were cast at any election may file a written application for a recount of the votes or a portion of the votes cast at that election for all candidates for election to that office.

Any group of five or more registered voters may file a written application for a recount of the votes or a portion of the votes cast upon any question or issue. They shall designate one of the members of the group as chair and shall indicate the voting residence of each member of the group.

An application for a recount of the votes cast for an office or on a ballot measure must be filed with the officer with whom filings are made for the jurisdiction.

An application for a recount must specify whether the recount will be done manually or by the vote tally system. A recount done by the vote tally system must use programming that recounts and reports only the office or ballot measure in question. The county shall also provide for a test of the logic and accuracy of that program.

An application for a recount must be filed within two business days after the county canvassing board or secretary of state has declared the official results of the primary or election for the office or issue for which the recount is requested.

This chapter applies to the recounting of votes cast by paper ballots and to the recounting of votes recorded on ballots counted by a vote tally system. [2011 c 349 § 23; 2004 c 271 § 177.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

29A.64.030 Deposit of fees—Notice—Public proceeding. (*Effective January 1, 2012.*) An application for a recount shall state the office for which a recount is requested and whether the request is for all or only a portion of the votes cast in that jurisdiction of that office. The person filing an application for a manual recount shall, at the same time, deposit with the county canvassing board or secretary of state, in cash or by certified check, a sum equal to twenty-five cents for each ballot cast in the jurisdiction or portion of the jurisdiction for which the recount is requested as security for the payment of any costs of conducting the recount. If the application is for a machine recount, the deposit must be equal to fifteen cents for each ballot. These charges shall be determined by the county canvassing board or boards under RCW 29A.64.081.

The county canvassing board shall determine the date, time, and place or places at which the recount will be conducted. Not less than one day before the date of the recount, the county auditor shall notify the applicant or affected parties and, if the recount involves an office, to any person for whom votes were cast for that office of the date, time, and place of the recount. Each person entitled to receive notice of the recount may attend, witness the recount, and be accompanied by counsel.

Proceedings of the canvassing board are public under chapter 42.30 RCW. Subject to reasonable and equitable guidelines adopted by the canvassing board, all interested persons may attend and witness a recount. [2011 c 349 § 24; 2005 c 243 § 20; 2003 c 111 § 1603. Prior: 2001 c 225 § 5; 1991 c 81 § 36; 1987 c 54 § 5; 1977 ex.s. c 361 § 99; 1965 c 9 § 29.64.020; prior: 1961 c 50 § 2; 1955 c 215 § 2. Formerly RCW 29.64.020.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Additional notes found at www.leg.wa.gov

29A.64.041 Procedure—Request to stop—Observers. (1) At the time and place established for a recount, the canvassing board or its duly authorized representatives, in the presence of all witnesses who may be in attendance, shall open the sealed containers containing the ballots to be recounted, and shall recount the votes for the offices or issues for which the recount has been ordered. Ballots shall be handled only by the members of the canvassing board or their duly authorized representatives.

The canvassing board shall not permit the tabulation of votes for any nomination, election, or issue other than the ones for which a recount was applied for or required.

(2) At any time before the ballots from all of the precincts listed in the application for the recount have been recounted, the applicant may file with the board a written request to stop the recount.

(3) The recount may be observed by persons representing the candidates affected by the recount or the persons representing both sides of an issue that is being recounted. Wit-

nesses shall be permitted to observe the ballots and the process of tabulating the votes, but they shall not be permitted to handle the ballots. The observers may not make a record of the names, addresses, or other information on the ballots, declarations, or lists of voters unless authorized by the superior court. The secretary of state or county auditor may limit the number of observers to not less than two on each side if, in his or her opinion, a greater number would cause undue delay or disruption of the recount process. [2011 c 10 § 63; 2004 c 271 § 179.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Chapter 29A.68 RCW CONTESTING AN ELECTION

Sections

- 29A.68.011 Prevention and correction of election frauds and errors. (*Effective January 1, 2012.*)
 29A.68.020 Commencement by registered voter—Causes for.
 29A.68.070 Misconduct of board—Irregularity material to result.
 29A.68.080 Misconduct of board—Number of votes affected—Enough to change result.

29A.68.011 Prevention and correction of election frauds and errors. (*Effective January 1, 2012.*) Any justice of the supreme court, judge of the court of appeals, or judge of the superior court in the proper county shall, by order, require any person charged with error, wrongful act, or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty and to do as the court orders or to show cause forthwith why the error should not be corrected, the wrongful act desisted from, or the duty or order not performed, whenever it is made to appear to such justice or judge by affidavit of an elector that:

- (1) An error or omission has occurred or is about to occur in printing the name of any candidate on official ballots; or
- (2) An error other than as provided in subsections (1) and (3) of this section has been committed or is about to be committed in printing the ballots; or
- (3) The name of any person has been or is about to be wrongfully placed upon the ballots; or
- (4) A wrongful act other than as provided for in subsections (1) and (3) of this section has been performed or is about to be performed by any election officer; or
- (5) Any neglect of duty on the part of an election officer other than as provided for in subsections (1) and (3) of this section has occurred or is about to occur; or
- (6) An error or omission has occurred or is about to occur in the official certification of the election.

An affidavit of an elector under subsections (1) and (3) of this section when relating to a primary election must be filed with the appropriate court no later than two days following the closing of the filing period for such office and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsections (1) and (3) of this section when relating to a general election must be filed with the appropriate court no later than three days following the official certification of the primary election returns and shall be heard and finally disposed of by the court not later than five days after the filing thereof. An affidavit of an elector under subsection (6) of this section

shall be filed with the appropriate court no later than ten days following the official certification of the election as provided in RCW 29A.60.190, 29A.60.240, or 29A.60.250 or, in the case of a recount, ten days after the official certification of the amended abstract as provided in RCW 29A.64.061. [2011 c 349 § 25; 2007 c 374 § 3; 2005 c 243 § 22; 2004 c 271 § 182.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

29A.68.020 Commencement by registered voter—

Causes for. Any of the following causes may be asserted by a registered voter to challenge the right to assume office of a candidate declared elected to that office:

(1) For misconduct on the part of any member of any precinct election board involved therein;

(2) Because the person whose right is being contested was not at the time the person was declared elected eligible to that office;

(3) Because the person whose right is being contested was previous to the election convicted of a felony by a court of competent jurisdiction, the conviction not having been reversed nor the person's civil rights restored after the conviction;

(4) Because the person whose right is being contested gave a bribe or reward to a voter or to an election officer for the purpose of procuring the election, or offered to do so;

(5) On account of illegal votes.

(a) Illegal votes include but are not limited to the following:

(i) More than one vote cast by a single voter;

(ii) A vote cast by a person disqualified under Article VI, section 3 of the state Constitution.

(b) Illegal votes do not include votes cast by improperly registered voters who were not properly challenged under RCW 29A.08.810 and 29A.08.820.

All election contests must proceed under RCW 29A.68.011. [2011 c 10 § 64; 2007 c 374 § 4; 2003 c 111 § 1702; 1983 1st ex.s. c 30 § 6; 1977 ex.s. c 361 § 101; 1965 c 9 § 29.65.010. Prior: 1959 c 329 § 26; prior: (i) Code 1881 § 3105; 1865 p 42 § 1; RRS § 5366. (ii) Code 1881 § 3109; 1865 p 43 § 5; RRS § 5370. Formerly RCW 29.65.010.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Civil rights

loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

Additional notes found at www.leg.wa.gov

29A.68.070 Misconduct of board—Irregularity material to result. No irregularity or improper conduct in the proceedings of any county canvassing board or any member of the board amounts to such misconduct as to annul or set aside any election unless the irregularity or improper conduct was such as to procure the person whose right to the office may be contested, to be declared duly elected although the person did not receive the highest number of legal votes. [2011 c 10 § 65; 2003 c 111 § 1707; 1965 c 9 § 29.65.060. Prior: Code 1881 § 3106; 1865 p 43 § 2; RRS § 5367. Formerly RCW 29.65.060.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

[2011 RCW Supp—page 640]

29A.68.080 Misconduct of board—Number of votes affected—Enough to change result. When any election for an office exercised in and for a county is contested on account of any misconduct on the part of a county canvassing board, or any member thereof, the election shall not be annulled and set aside upon any proof thereof, unless the rejection of the vote of such precinct or precincts will change the result as to such office in the remaining vote of the county. [2011 c 10 § 66; 2003 c 111 § 1708. Prior: 1965 c 9 § 29.65.070; prior: Code 1881 § 3107; 1865 p 43 § 3; RRS § 5368. Formerly RCW 29.65.070.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Chapter 29A.76 RCW REDISTRICTING

Sections

29A.76.010 Counties, municipal corporations, and special purpose districts. (*Effective January 1, 2012.*)

29A.76.010 Counties, municipal corporations, and special purpose districts. (*Effective January 1, 2012.*) (1)

It is the responsibility of each county, municipal corporation, and special purpose district with a governing body comprised of internal director, council, or commissioner districts not based on statutorily required land ownership criteria to periodically redistrict its governmental unit, based on population information from the most recent federal decennial census.

(2) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in RCW 44.05.030 shall forward the census information to each municipal corporation, county, and district charged with redistricting under this section.

(3) No later than eight months after its receipt of federal decennial census data, the governing body of the municipal corporation, county, or district shall prepare a plan for redistricting its internal or director districts.

(4) The plan shall be consistent with the following criteria:

(a) Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.

(b) Each district shall be as compact as possible.

(c) Each district shall consist of geographically contiguous area.

(d) Population data may not be used for purposes of favoring or disfavoring any racial group or political party.

(e) To the extent feasible and if not inconsistent with the basic enabling legislation for the municipal corporation, county, or district, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

(5) During the adoption of its plan, the municipal corporation, county, or district shall ensure that full and reasonable public notice of its actions is provided. The municipal corporation, county, or district shall hold at least one public hearing on the redistricting plan at least one week before adoption of the plan.

(6)(a) Any registered voter residing in an area affected by the redistricting plan may request review of the adopted local plan by the superior court of the county in which he or she resides, within fifteen days of the plan's adoption. Any request for review must specify the reason or reasons alleged why the local plan is not consistent with the applicable redistricting criteria. The municipal corporation, county, or district may be joined as respondent. The superior court shall thereupon review the challenged plan for compliance with the applicable redistricting criteria set out in subsection (4) of this section.

(b) If the superior court finds the plan to be consistent with the requirements of this section, the plan shall take effect immediately.

(c) If the superior court determines the plan does not meet the requirements of this section, in whole or in part, it shall remand the plan for further or corrective action within a specified and reasonable time period.

(d) If the superior court finds that any request for review is frivolous or has been filed solely for purposes of harassment or delay, it may impose appropriate sanctions on the party requesting review, including payment of attorneys' fees and costs to the respondent municipal corporation, county, or district. [2011 c 349 § 26; 2003 c 111 § 1901. Prior: 1984 c 13 § 4; 1983 c 16 § 15; 1982 c 2 § 27. Formerly RCW 29.70.100.]

Effective date—2011 c 349: See note following RCW 29A.04.255.

Additional notes found at www.leg.wa.gov

Chapter 29A.84 RCW CRIMES AND PENALTIES

Sections

29A.84.020	Violations by officers.
29A.84.050	Tampering with registration form, ballot declaration.
29A.84.250	Violations—Corrupt practices. (<i>Effective January 1, 2012.</i>)
29A.84.510	Acts prohibited in voting center—Prohibited practices.
29A.84.520	Electioneering by election officers forbidden.
29A.84.525	Repealed.
29A.84.530	Refusing to leave voting booth.
29A.84.540	Ballots—Removing from voting center or ballot drop location.
29A.84.545	Paper record from direct recording electronic voting device—Removing from voting center.
29A.84.550	Tampering with materials.
29A.84.655	Tabulation of invalid ballots.
29A.84.670	Repealed.
29A.84.680	Ballots—Violation.
29A.84.730	Divulging ballot count.
29A.84.740	Repealed.

29A.84.020 Violations by officers. Every officer who willfully violates RCW 29A.56.110 through 29A.56.270, for the violation of which no penalty is prescribed in this title or who willfully fails to comply with the provisions of RCW 29A.56.110 through 29A.56.270 is guilty of a gross misdemeanor. [2011 c 10 § 67; 2003 c 111 § 2102; 1965 c 9 § 29.82.210. Prior: 1953 c 113 § 1; prior: 1913 c 146 § 16, part; RRS § 5365, part. Formerly RCW 29.82.210.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.84.050 Tampering with registration form, ballot declaration. (1) A person who knowingly destroys, alters, defaces, conceals, or discards a completed voter registration

form or signed ballot declaration is guilty of a gross misdemeanor. This section does not apply to (a) the voter who completed the form or declaration, or (b) a county auditor who acts as authorized by law.

(2) Any person who intentionally fails to return another person's completed voter registration form or signed ballot declaration to the proper state or county elections office by the applicable deadline is guilty of a gross misdemeanor. [2011 c 10 § 68; 2005 c 243 § 23.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.84.250 Violations—Corrupt practices. (*Effective January 1, 2012.*) Every person is guilty of a gross misdemeanor who:

(1) For any consideration or gratuity or promise thereof, signs or declines to sign any initiative or referendum petition; or

(2) Provides or receives consideration for soliciting or procuring signatures on an initiative or referendum petition if any part of the consideration is based upon the number of signatures solicited or procured, or offers to provide or agrees to receive such consideration any of which is based on the number of signatures solicited or procured; or

(3) Gives or offers any consideration or gratuity to any person to induce him or her to sign or not to sign or to vote for or against any initiative or referendum measure; or

(4) Interferes with or attempts to interfere with the right of any voter to sign or not to sign an initiative or referendum petition or with the right to vote for or against an initiative or referendum measure by threats, intimidation, or any other corrupt means or practice; or

(5) Receives, handles, distributes, pays out, or gives away, directly or indirectly, money or any other thing of value contributed by or received from any person, firm, association, or corporation whose residence or principal office is, or the majority of whose members or stockholders have their residence outside, the state of Washington, for any service rendered for the purpose of aiding in procuring signatures upon any initiative or referendum petition or for the purpose of aiding in the adoption or rejection of any initiative or referendum measure. This subsection does not apply to or prohibit any activity that is properly reported in accordance with the applicable provisions of chapter 42.17A RCW.

A gross misdemeanor under this section is punishable under RCW 9A.20.021. [2011 c 60 § 14; 2003 c 111 § 2113; 1993 c 256 § 4; 1975-'76 2nd ex.s. c 112 § 2; 1965 c 9 § 29.79.490. Prior: 1913 c 138 § 32, part; RRS § 5428, part. Formerly RCW 29.79.490]

Effective date—2011 c 60: See RCW 42.17A.919.

Misconduct in signing a petition: RCW 9.44.080.

Additional notes found at www.leg.wa.gov

29A.84.510 Acts prohibited in voting center—Prohibited practices. (1) During the voting period that begins eighteen days before and ends the day of a special election, general election, or primary, no person may, within a voting center:

(a) Suggest or persuade or attempt to suggest or persuade any voter to vote for or against any candidate or ballot measure;

(b) Circulate cards or handbills of any kind;

(c) Solicit signatures to any kind of petition; or

(d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the voting center.

(2) No person may obstruct the doors or entries to a building in which a voting center or ballot drop location is located or prevent free access to and from any voting center or ballot drop location. Any sheriff, deputy sheriff, or municipal law enforcement officer shall prevent such obstruction, and may arrest any person creating such obstruction.

(3) Any violation of this section is a gross misdemeanor, punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021, and the person convicted may be ordered to pay the costs of prosecution. [2011 c 10 § 69; 2003 c 111 § 2121. Prior: 1991 c 81 § 20; 1990 c 59 § 75; 1984 c 35 § 1; 1983 1st ex.s. c 33 § 1; 1965 c 9 § 29.51.020; prior: (i) 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. (ii) 1895 c 156 § 7, part; 1889 p 409 § 22, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5279, part. Formerly RCW 29.51.020]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Additional notes found at www.leg.wa.gov

29A.84.520 Electioneering by election officers forbidden. Any election officer who does any electioneering during the voting period that begins eighteen days before and ends the day of a special election, general election, or primary, is guilty of a misdemeanor, and upon conviction must be fined in any sum not exceeding one hundred dollars and pay the costs of prosecution. [2011 c 10 § 70; 2003 c 111 § 2122; 1965 c 9 § 29.51.030. Prior: 1947 c 35 § 1, part; 1889 p 412 § 33, part; Rem. Supp. 1947 § 5298, part. Formerly RCW 29.51.030.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

29A.84.525 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.84.530 Refusing to leave voting booth. Deliberately impeding other voters from casting their votes by refusing to leave a voting booth or voting device is a misdemeanor and is subject to the penalties provided in chapter 9A.20 RCW. Election officers may provide assistance in the manner provided by RCW 29A.40.160 to any voter who requests it. [2011 c 10 § 71; 2003 c 111 § 2123. Prior: 1990 c 59 § 49. Formerly RCW 29.51.221.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

29A.84.540 Ballots—Removing from voting center or ballot drop location. Any person who, without lawful [2011 RCW Supp—page 642]

authority, removes a ballot from a voting center or ballot drop location is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2011 c 10 § 72; 2003 c 111 § 2124. Prior: 1991 c 81 § 1; 1965 c 9 § 29.85.010; prior: 1893 c 115 § 2; RRS § 5396. Formerly RCW 29.85.010.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Additional notes found at www.leg.wa.gov

29A.84.545 Paper record from direct recording electronic voting device—Removing from voting center. Anyone who, without authorization, removes from a voting center a paper record produced by a direct recording electronic voting device is guilty of a class C felony punishable under RCW 9A.20.021. [2011 c 10 § 73; 2005 c 242 § 6.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Paper records: RCW 29A.12.085, 29A.60.095.

29A.84.550 Tampering with materials. Any person who willfully defaces, removes, or destroys any of the supplies or materials that the person knows are intended both for use in a voting center and for enabling a voter to prepare his or her ballot is guilty of a class C felony punishable under RCW 9A.20.021. [2011 c 10 § 74; 2003 c 111 § 2125; 1991 c 81 § 9; 1965 c 9 § 29.85.110. Prior: 1889 p 412 § 31; RRS § 5296. FORMER PART OF SECTION: 1935 c 108 § 3, part; RRS § 5339-3, part, now codified, as reenacted, in RCW 29.85.230. Formerly RCW 29.85.110.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Additional notes found at www.leg.wa.gov

29A.84.655 Tabulation of invalid ballots. Any election officer who intentionally tabulates or causes to be tabulated, through any act or omission, an invalid ballot when the person has actual knowledge that the ballot is invalid, is guilty of a class C felony punishable under RCW 9A.20.021. [2011 c 10 § 75; 2003 c 111 § 2132. Prior: 1991 c 81 § 14; 1965 c 9 § 29.85.220; prior: 1911 c 89 § 1, part; Code 1881 § 911; 1873 p 205 § 108; RRS § 5385. Formerly RCW 29.85.220.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Additional notes found at www.leg.wa.gov

29A.84.670 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

29A.84.680 Ballots—Violation. (1) A person who willfully violates any provision of chapter 29A.40 RCW regarding the assertion or declaration of qualifications to receive or cast a ballot or unlawfully casts a ballot is guilty of a class C felony punishable under RCW 9A.20.021.

(2) Except as provided in this chapter, a person who willfully violates any other provision of chapter 29A.40 RCW is guilty of a misdemeanor. [2011 c 10 § 76. Prior: 2003 c 111 § 2136; 2003 c 53 § 179; 2001 c 241 § 14; 1994 c 269 § 2;

1991 c 81 § 34; 1987 c 346 § 20; 1983 1st ex.s. c 71 § 9. Formerly RCW 29.36.370, 29.36.160.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

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

Legislative intent—Effective date—1987 c 346: See notes following RCW 29A.40.010.

Tampering with registration form, ballot declaration: RCW 29A.84.050.

Additional notes found at www.leg.wa.gov

29A.84.730 Divulging ballot count. (1) In any location in which ballots are counted, no person authorized by law to be present while votes are being counted may divulge any results of the count of the ballots at any time prior to 8:00 p.m. on the day of the primary or special or general election.

(2) A violation of this section is a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021. [2011 c 10 § 77; 2003 c 111 § 2139. Prior: 1991 c 81 § 15; 1990 c 59 § 55; 1977 ex.s. c 361 § 85; 1965 c 9 § 29.54.035; prior: 1955 c 148 § 6. Formerly RCW 29.85.225, 29.54.035.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Intent—Effective date—1990 c 59: See notes following RCW 29A.04.013.

Divulging returns in voting device precincts: RCW 29A.60.120.

Additional notes found at www.leg.wa.gov

29A.84.740 Repealed. See Supplementary Table of Disposition of Former RCW Sections, this volume.

Title 30

BANKS AND TRUST COMPANIES

Chapters

30.04 General provisions.

30.08 Organization and powers.

30.22 Financial institution individual account deposit act.

30.49 Merger, consolidation, and conversion.

Chapter 30.04 RCW

GENERAL PROVISIONS

Sections

30.04.140 Pledge of securities or assets prohibited—Exceptions.
30.04.300 Foreign branch banks.

30.04.140 Pledge of securities or assets prohibited—Exceptions. No bank or trust company shall pledge or hypothecate any of its securities or assets to any depositor, except that it may qualify as depository for United States deposits, or other public funds, or funds held in trust and deposited by any public officer by virtue of his or her office, or as a depository for the money of estates under the statutes of the United States pertaining to bankruptcy or funds deposited by a trustee or receiver in bankruptcy appointed by any court of the United States or any referee thereof, or funds held by the United States or the state of Washington, or any officer

thereof in trust, or for funds of corporations owned or controlled by the United States, and may give such security for such deposits as are required by law or by the officer making the same; and it may give security to its trust department for deposits with itself which represent trust funds invested in savings accounts or which represent fiduciary funds awaiting investment or distribution. [2011 c 336 § 744; 1986 c 279 § 7; 1983 c 157 § 6; 1967 c 133 § 2; 1955 c 33 § 30.04.140. Prior: 1933 c 42 § 24, part; 1917 c 80 § 54, part; RRS § 3261, part.]

Additional notes found at www.leg.wa.gov

30.04.300 Foreign branch banks. A branch of any foreign bank or banker actually and publicly engaged in banking in this state on March 10, 1917, in full compliance with the laws hereof, which were in force immediately prior to March 10, 1917, and which branch has a capital not less in amount than that required for the organization of a state bank as provided in this title at the time and place when and where such branch was established, may continue its said business, subject to all of the regulations and supervision provided for banks. The amount upon which it pays taxes shall be prima facie evidence of the amount and existence of such capital. No such bank or banker shall set forth on its or his or her stationery or in any manner advertise in this state a greater capital, surplus and undivided profits than are actually maintained at such branch. Every foreign corporation, bank and banker, and every officer, agent, and employee thereof who violates any provision of this section or which violates the terms of the resolution filed as required by *RCW 30.04.290 shall for each violation forfeit and pay to the state of Washington the sum of one thousand dollars. A civil action for the recovery of any such sum may be brought by the attorney general in the name of the state. [2011 c 336 § 745; 1955 c 33 § 30.04.300. Prior: 1917 c 80 § 41; RRS § 3248.]

***Reviser's note:** RCW 30.04.290 was repealed by 1994 c 256 § 124, without cognizance of its amendment by 1994 c 92 § 27. It has been decodified for publication purposes pursuant to RCW 1.12.025. RCW 30.04.290 was subsequently repealed by 1997 c 101 § 7.

Chapter 30.08 RCW

ORGANIZATION AND POWERS

Sections

30.08.025 Limited liability company—Organization or conversion—Approval of director—Conditions—Application of chapter 25.15 RCW—Definitions.
30.08.140 Corporate powers of banks. (*Contingent effective date.*)
30.08.150 Corporate powers of trust companies.

30.08.025 Limited liability company—Organization or conversion—Approval of director—Conditions—Application of chapter 25.15 RCW—Definitions. (1) Notwithstanding any other provision of this title, if the conditions of this section are met, a bank, a trust company, or a holding company of a bank or a trust company, may be organized as, or convert to, a limited liability company under the Washington limited liability company act, chapter 25.15 RCW. As used in this section, "bank" includes an applicant to become a bank or holding company of a bank, "trust company" includes an applicant to become a trust company, and "hold-

ing company" means a holding company of a bank or trust company.

(2)(a) Before a bank, trust company, or holding company may organize as, or convert to, a limited liability company, the bank, trust company, or holding company must obtain approval of the director.

(b)(i) To obtain approval under this section from the director, the bank, trust company, or holding company must file a request for approval with the director at least ninety days before the day on which the bank, trust company, or holding company becomes a limited liability company.

(ii) If the director does not disapprove the request for approval within ninety days from the day on which the director receives the request, the request is considered approved.

(iii) When taking action on a request for approval filed under this section, the director may:

(A) Approve the request;

(B) Approve the request subject to terms and conditions the director considers necessary; or

(C) Disapprove the request.

(3) To approve a request for approval, the director must find that the bank, trust company, or holding company:

(a) Will operate in a safe and sound manner; and

(b) Has the following characteristics:

(i) The certificate of formation and limited liability company require or set forth that the duration of the limited liability company is perpetual;

(ii) The bank, trust company, or holding company is not otherwise subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;

(iii) The exclusive authority to manage the bank, trust company, or holding company is vested in a board of managers or directors that:

(A) Is elected or appointed by the owners;

(B) Is not required to have owners of the bank, trust company, or holding company included on the board;

(C) Possesses adequate independence and authority to supervise the operation of the bank, trust company, or holding company; and

(D) Operates with substantially the same rights, powers, privileges, duties, and responsibilities as the board of directors of a corporation;

(iv) Neither state law, nor the bank's, trust company's, or holding company's operating agreement, bylaws, or other organizational documents provide that an owner of the bank, trust company, or holding company is liable for the debts, liabilities, and obligations of the bank, trust company, or holding company in excess of the amount of the owner's investment;

(v) Neither state law, nor the bank's, trust company's, or holding company's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the bank, trust company, or holding company in order for any owner to transfer an ownership interest in the bank, trust company, or holding company, including voting rights;

(vi) The bank, trust company, or holding company is able to obtain new investment funding if needed to maintain adequate capital;

(vii) The bank, trust company, or holding company is able to comply with all legal and regulatory requirements for a federally insured depository bank, trust company, or holding company of a federally insured depository bank, under applicable federal and state law; and

(viii) A bank, trust company, or holding company that is organized as a limited liability company shall maintain the characteristics listed in this subsection (3)(b) during such time as it is authorized to conduct business under this title as a limited liability company.

(4)(a) All rights, privileges, powers, duties, and obligations of a bank, trust company, or holding company, that is organized as a limited liability company, and its members and managers are governed by the Washington limited liability company act, chapter 25.15 RCW, except:

(i) To the extent chapter 25.15 RCW is in conflict with federal law or regulation respecting the organization of a federally insured depository institution as a limited liability company, such federal law or regulation supersedes the conflicting provisions contained in chapter 25.15 RCW in relation to a bank, trust company, or holding company organized as a limited liability company pursuant to this section; and

(ii) Without limitation, the following are inapplicable to a bank, trust company, or holding company organized as a limited liability company:

(A) Permitting automatic dissolution or suspension of a limited liability company as set forth in RCW 25.15.270(1), pursuant to a statement of limited duration which, though impermissible under subsection (3)(b)(i) of this section, has been provided for in a certificate of formation;

(B) Permitting automatic dissolution or suspension of a limited liability company, pursuant to the limited liability company agreement, as set forth in RCW 25.15.270(2);

(C) Permitting dissolution of the limited liability company agreement based upon agreement of all the members, as set forth in RCW 25.15.270(3);

(D) Permitting dissociation of all the members of the limited liability company, as set forth in RCW 25.15.270(4); and

(E) Permitting automatic dissolution or suspension of a limited liability company, pursuant to operation of law, as otherwise set forth in chapter 25.15 RCW.

(b) Notwithstanding (a) of this subsection:

(i) For purposes of transferring a member's interests in the bank, trust company, or holding company, a member's interest in the bank, trust company, or holding company is treated like a share of stock in a corporation; and

(ii) If a member's interest in the bank, trust company, or holding company is transferred voluntarily or involuntarily to another person, the person who receives the member's interest obtains the member's entire rights associated with the member's interest in the bank, trust company, or holding company including all economic rights and all voting rights.

(c) A bank, trust company, or holding company may not by agreement or otherwise change the application of (a) of this subsection to the bank, trust company, or holding company.

(5)(a) Notwithstanding any provision of chapter 25.15 RCW or this section to the contrary, all voting members remain liable and responsible as fiduciaries of a bank, trust company, or holding company organized as a limited liability

company, regardless of resignation, dissociation, or disqualification, to the same extent that directors of a bank, trust company, or holding company organized as a corporation would be or remain liable or responsible to the department and applicable federal banking regulators; and

(b) If death, incapacity, or disqualification of all members of the limited liability company would result in a complete dissociation of all members, then the bank, trust company, holding company, or all three, as applicable is deemed nonetheless to remain in existence for purposes of the department or an applicable federal regulator, or both, having standing under RCW 30.44.270 or applicable federal law, or both, to exercise the powers and authorities of a receiver for the bank, trust company, or holding company.

(6) For the purposes of this section, and unless the context clearly requires otherwise, for the purpose of applying chapter 25.15 RCW to a bank, trust company, or holding company organized as a limited liability company:

(a) "Articles of incorporation" includes a limited liability company's certificate of formation, as that term is used in RCW 25.15.005(1) and 25.15.070, and a limited liability company agreement as that term is used in RCW 25.15.005(5);

(b) "Board of directors" includes one or more persons who have, with respect to a bank, trust company, or holding company described in subsection (1) of this section, authority that is substantially similar to that of a board of directors of a corporation;

(c) "Bylaws" includes a limited liability company agreement as that term is defined in RCW 25.15.005(5);

(d) "Corporation" includes a limited liability company organized under chapter 25.15 RCW;

(e) "Director" includes any of the following of a limited liability company:

- (i) A manager;
- (ii) A director; or
- (iii) Other person who has, with respect to the bank, trust company, or holding company described in subsection (1) of this section, authority substantially similar to that of a director of a corporation;

(f) "Dividend" includes distributions made by a limited liability company under RCW 25.15.215;

(g) "Incorporator" includes the person or persons executing the certificate of formation as provided in RCW 25.15.085(1);

(h) "Officer" includes any of the following of a bank, trust company, or holding company:

- (i) An officer; or
- (ii) Other person who has, with respect to the bank, trust company, or holding company, authority substantially similar to that of an officer of a corporation;

(i) "Security," "shares," or "stock" of a corporation includes a membership interest in a limited liability company and any certificate or other evidence of an ownership interest in a limited liability company; and

(j) "Stockholder" or "shareholder" includes an owner of an equity interest in a bank, trust company, or holding company, including a member as defined in RCW 25.15.005(8) and 25.15.115. [2011 c 52 § 1; 2006 c 48 § 2.]

30.08.140 Corporate powers of banks. (*Contingent effective date.*) Upon the issuance of a certificate of authority to a bank, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

- (1) To adopt and use a corporate seal.
- (2) To have perpetual succession.
- (3) To make contracts.
- (4) To sue and be sued, the same as a natural person.
- (5) To elect directors who, subject to the provisions of the corporation's bylaws, shall have power to appoint such officers as may be necessary or convenient, to define their powers and duties and to dismiss them at pleasure, and who shall also have general supervision and control of the affairs of such corporation.

(6) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of its affairs.

(7) To invest and reinvest its funds in marketable obligations evidencing the indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, or debentures commonly known as investment securities except as may by regulation be limited by the director.

(8) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt, to receive deposits of money and commercial paper, to lend money secured or unsecured, to issue all forms of letters of credit, to buy and sell bullion, coins and bills of exchange.

(9) To take and receive as bailee for hire upon terms and conditions to be prescribed by the corporation, for safekeeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities and valuable paper of any kind and other valuable personal property, and to rent vaults, safes, boxes and other receptacles for safekeeping and storage of personal property.

(10) If the bank be located in a city of not more than five thousand inhabitants, to act as insurance agent. A bank exercising this power may continue to act as an insurance agent notwithstanding a change of the population of the city in which it is located.

(11) To accept drafts or bills of exchange drawn upon it having not more than six months sight to run, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods, providing shipping documents conveying or securing title are attached at the time of acceptance; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title to readily marketable staples. No bank shall accept, either in a foreign or a domestic transaction, for any one person, company, firm or corporation, to an amount equal at any one time in the aggregate to more than ten percent of its paid up and unimpaired capital stock and surplus unless the bank is secured by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid up and unimpaired capital stock and surplus: PROVIDED, HOWEVER, That the director, under such general regulations applicable to all banks irrespective of the amount of capital or surplus, as the director may prescribe

may authorize any bank to accept such bills to an amount not exceeding at any time in the aggregate one hundred percent of its paid up and unimpaired capital stock and surplus: PROVIDED, FURTHER, That the aggregate of acceptances growing out of domestic transactions shall in no event exceed fifty percent of such capital stock and surplus.

(12) To accept drafts or bills of exchange drawn upon it, having not more than three months sight to run, drawn under regulations to be prescribed by the director by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies or insular possessions. Such drafts or bills may be acquired by banks in such amounts and subject to such regulations, restrictions and limitations as may be provided by the director: PROVIDED, HOWEVER, That no bank shall accept such drafts or bills of exchange referred to in this subdivision for any one bank to an amount exceeding in the aggregate ten percent of the paid up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security, and that no such drafts or bills of exchange shall be accepted by any bank in an amount exceeding at any time the aggregate of one-half of its paid up and unimpaired capital and surplus: PROVIDED FURTHER, That compliance by any bank which is a member of the federal reserve system of the United States with the rules, regulations and limitations adopted by the federal reserve board thereof with respect to the acceptance of drafts or bills of exchange by members of such federal reserve system shall be a sufficient compliance with the requirements of this subdivision or paragraph relating to rules, regulations and limitations prescribed by the director.

(13) To have and exercise all powers necessary or convenient to effect its purposes.

(14) To serve as custodian of an individual retirement account and pension and profit sharing plans qualified under internal revenue code section 401(a), the assets of which are invested in deposits of the bank or trust company or are invested, pursuant to directions from the customer owning the account, in securities traded on a national securities market: PROVIDED, That the bank or trust company shall accept no investment responsibilities over the account unless it is granted trust powers by the director.

(15) To be a limited partner in a limited partnership that engages in only such activities as are authorized for the bank.

(16) To exercise any other power or authority permissible under applicable state or federal law conducted by out-of-state state banks with branches in Washington to the same extent if, in the opinion of the director, those powers and authorities affect the operations of banking in Washington or affect the delivery of financial services in Washington.

(17) To conduct a promotional contest of chance as authorized in RCW 9.46.0356(l)(b), as long as the conditions of RCW 9.46.0356(5) and 30.22.260 are complied with to the satisfaction of the director. [2011 c 303 § 7; 1996 c 2 § 5; 1994 c 92 § 58; 1986 c 279 § 29; 1957 c 248 § 3; 1955 c 33 § 30.08.140. Prior: 1931 c 127 § 1; 1919 c 209 § 8; 1917 c 80 § 23; RRS § 3230.]

Contingent effective date—2011 c 303 §§ 7 and 8: "Sections 7 and 8 of this act take effect when the director of the department of financial insti-

tutions finds that a federal regulatory agency has, through federal law, regulation, or official regulatory interpretation, interpreted federal law to permit banks operating under the authority of Title 30 or 32 RCW to conduct a promotional contest of chance as defined in RCW 30.22.040." [2011 c 303 § 9.]

Findings—Intent—2011 c 303: See note following RCW 9.46.0356.

Additional notes found at www.leg.wa.gov

30.08.150 Corporate powers of trust companies.

Upon the issuance of a certificate of authority to a trust company, the persons named in the articles of incorporation and their successors shall thereupon become a corporation and shall have power:

(1) To execute all the powers and possess all the privileges conferred on banks.

(2) To act as fiscal or transfer agent of the United States or of any state, municipality, body politic, or corporation and in such capacity to receive and disburse money.

(3) To transfer, register, and countersign certificates of stock, bonds, or other evidences of indebtedness and to act as attorney-in-fact or agent of any corporation, foreign or domestic, for any purpose, statutory or otherwise.

(4) To act as trustee under any mortgage, or bonds, issued by any municipality, body politic, or corporation, foreign or domestic, or by any individual, firm, association, or partnership, and to accept and execute any municipal or corporate trust.

(5) To receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between such corporation and those dealing with it.

(6) To collect coupons on or interest upon all manner of securities, when authorized so to do, by the parties depositing the same.

(7) To accept trusts from and execute trusts for married persons in respect to their separate property and to be their agent in the management of such property and to transact any business in relation thereto.

(8) To act as receiver or trustee of the estate of any person, or to be appointed to any trust by any court, to act as assignee under any assignment for the benefit of creditors of any debtor, whether made pursuant to statute or otherwise, and to be the depository of any moneys paid into court.

(9) To be appointed and to accept the appointment of executor of, or trustee under, the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person and to be appointed and to act as guardian of the estate of lunatics, idiots, persons of unsound mind, minors and habitual drunkards: PROVIDED, HOWEVER, That the power hereby granted to trust companies to act as guardian or administrator, with or without the will annexed, shall not be construed to deprive parties of the prior right to have issued to them letters of guardianship, or of administration, as such right now exists under the law of this state.

(10) To execute any trust or power of whatever nature or description that may be conferred upon or entrusted or committed to it by any person or by any court or municipality, foreign or domestic corporation, and any other trust or power conferred upon or entrusted or committed to it by grant, assignment, transfer, devise, bequest, or by any other authority and to receive, take, use, manage, hold, and dispose of, according to the terms of such trusts or powers any property

or estate, real or personal, which may be the subject of any such trust or power.

(11) Generally to execute trusts of every description not inconsistent with law.

(12) To purchase, invest in, and sell promissory notes, bills of exchange, bonds, debentures, and mortgages and when moneys are borrowed or received for investment, the bonds or obligations of the company may be given therefor, but no trust company hereafter organized shall issue such bonds: PROVIDED, That no trust company which receives money for investment and issues the bonds of the company therefor shall engage in the business of banking or receiving of either savings or commercial deposits: AND PROVIDED, That it shall not issue any bond covering a period of more than ten years between the date of its issuance and its maturity date: AND PROVIDED FURTHER, That if for any cause, the holder of any such bond upon which one or more annual rate installments have been paid, shall fail to pay the subsequent annual rate installments provided in said bond such holder shall, on or before the maturity date of said bond, be paid not less than the full sum which he or she has paid in on account of said bond. [2011 c 336 § 746; 1973 1st ex.s. c 154 § 48; 1955 c 33 § 30.08.150. Prior: 1929 c 72 § 4, part; 1923 c 115 § 6, part; 1921 c 94 § 1, part; 1917 c 80 § 24, part; RRS § 3231, part.]

Additional notes found at www.leg.wa.gov

Chapter 30.22 RCW

FINANCIAL INSTITUTION INDIVIDUAL ACCOUNT DEPOSIT ACT

Sections

30.22.040	Definitions.
30.22.150	Payment to minors and incompetents.
30.22.260	Promotional contests of chance—Director's authority.

30.22.040 Definitions. Unless the context of this chapter otherwise requires, the terms contained in this section have the meanings indicated.

(1) "Account" means a contract of deposit between a depositor or depositors and a financial institution; the term includes a checking account, savings account, certificate of deposit, savings certificate, share account, savings bond, and other like arrangements.

(2) "Actual knowledge" means written notice to a manager of a branch of a financial institution, or an officer of the financial institution in the course of his or her employment at the branch, pertaining to funds held on deposit in an account maintained by the branch received within a period of time which affords the financial institution a reasonable opportunity to act upon the knowledge.

(3) "Agency account" means an account to which funds may be deposited and from which payments may be made by an agent designated by a depositor. In the event there is more than one depositor named on an account, each depositor may designate the same or a different agent for the purpose of depositing to or making payments of funds from a depositor's account.

(4) "Agent" means a person designated by a depositor or depositors in a contract of deposit or other document to have

the authority to deposit and to make payments from an account in the name of the depositor or depositors.

(5) "Depositor," when utilized in determining the rights of individuals to funds in an account, means an individual who owns the funds. When utilized in determining the rights of a financial institution to make or withhold payment, and/or to take any other action with regard to funds held under a contract of deposit, "depositor" means the individual or individuals who have the current right to payment of funds held under the contract of deposit without regard to the actual rights of ownership thereof by these individuals. A trust or P.O.D. account beneficiary becomes a depositor only when the account becomes payable to the beneficiary by reason of having survived the depositor or depositors named on the account, depending upon the provisions of the contract of deposit.

(6) "Depositor's funds" or "funds of a depositor" means the amount of all deposits belonging to or made for the benefit of a depositor, less all withdrawals of the funds by the depositor or by others for the depositor's benefit, plus the depositor's prorated share of any interest or dividends included in the current balance of the account and any proceeds of deposit life insurance added to the account by reason of the death of a depositor.

(7) "Director" means the director of the department of financial institutions or his or her designee.

(8) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business and accept deposits in this state under state or federal law.

(9) "Individual" means a human being; "person" includes an individual, corporation, partnership, limited partnership, joint venture, trust, or other entity recognized by law to have separate legal powers.

(10) "Joint account with right of survivorship" means an account in the name of two or more depositors and which provides that the funds of a deceased depositor become the property of one or more of the surviving depositors.

(11) "Joint account without right of survivorship" means an account in the name of two or more depositors and which contains no provision that the funds of a deceased depositor become the property of the surviving depositor or depositors.

(12) "Payment(s)" of sums on deposit includes withdrawal, payment by check or other directive of a depositor or his or her agent, any pledge of sums on deposit by a depositor or his or her agent, any set-off or reduction or other disposition of all or part of an account balance, and any payments to any person under RCW 30.22.120, 30.22.140, 30.22.150, 30.22.160, 30.22.170, 30.22.180, 30.22.190, 30.22.200, and 30.22.220.

(13) "Promotional contest of chance" means a promotional contest conducted pursuant to RCW 9.46.0356(1)(b).

(14) "Proof of death" means a certified or authenticated copy of a death certificate, or photostatic copy thereof, purporting to be issued by an official or agency of the jurisdiction where the death purportedly occurred, or a certified or authenticated copy of a record or report of a governmental agency, domestic or foreign, that a person is dead. In either case, the proofs constitute prima facie proof of the fact, place, date, and time of death, and identity of the decedent and the

status of the dates, circumstances, and places disclosed by the record or report.

(15) "Request" means a request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this chapter the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(16) "Single account" means an account in the name of one depositor only.

(17) "Trust or P.O.D. account beneficiary" means a person or persons, other than a codepositor, who has or have been designated by a depositor or depositors to receive the depositor's funds remaining in an account upon the death of a depositor or all depositors.

(18) "Trust and P.O.D. accounts" means accounts payable on request to a depositor during the depositor's lifetime, and upon the depositor's death to one or more designated beneficiaries, or which are payable to two or more depositors during their lifetimes, and upon the death of all depositors to one or more designated beneficiaries. The term "trust account" does not include deposits by trustees or other fiduciaries where the trust or fiduciary relationship is established other than by a contract of deposit with a financial institution.

(19) "Withdrawal" means payment to a person pursuant to check or other directive of a depositor. [2011 c 336 § 747; 2011 c 303 § 4; 1981 c 192 § 4.]

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2011 c 303 § 4 and by 2011 c 336 § 747, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2011 c 303: See note following RCW 9.46.0356.

Powers of attorney or agent in probate and trust banking transactions: RCW 11.94.030.

30.22.150 Payment to minors and incompetents.

Financial institutions may make payments of funds on deposit in an account established by a depositor who is a minor or incompetent without regard to whether it has actual knowledge of the minority or incompetency of the depositor unless the branch of the financial institution at which the account is maintained has received written notice to withhold payment to the minor or incompetent by the guardian of his or her estate and had a reasonable opportunity to act upon the notice. [2011 c 336 § 748; 1981 c 192 § 15.]

30.22.260 Promotional contests of chance—Director's authority. (1) If approved by its board of directors, a financial institution may conduct a promotional contest of chance as permitted under RCW 9.46.0356(1)(b).

(2) A financial institution must not conduct a savings promotional contest of chance, if, in the opinion of the director:

(a) It is likely to or does adversely affect the financial institution's safety and soundness;

[2011 RCW Supp—page 648]

(b) It is administered in an unsafe and unsound or imprudent manner, or in a manner that is likely to or does result in actual or potential reputational harm to the financial institution; or

(c) It is likely to or has misled the financial institution's members, depositors, or the general public.

(3) The director may examine the conduct of a promotional contest of chance pursuant to his or her supervisory and examination powers under:

(a) Title 30 RCW, in regard to a bank;

(b) Title 32 RCW, in regard to a mutual or stock savings bank; or

(c) Chapter 31.12 RCW, in regard to a state credit union.

(4) The director may exercise his or her full enforcement powers under the titles and chapter in subsection (3) of this section and may issue a cease and desist order for a violation of this section.

(5) A financial institution must maintain records sufficient to facilitate an audit of a promotional contest of chance, and must provide those records to the director upon request. [2011 c 303 § 5.]

Findings—Intent—2011 c 303: See note following RCW 9.46.0356.

Chapter 30.49 RCW

MERGER, CONSOLIDATION, AND CONVERSION

Sections

30.49.050 Merger to resulting state bank—Stockholders' vote—Notice of meeting—Waiver of notice.

30.49.050 Merger to resulting state bank—Stockholders' vote—Notice of meeting—Waiver of notice. To be effective, a merger which is to result in a state bank must be approved by the stockholders of each merging state bank by a vote of two-thirds of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments in the merger agreement.

Unless waived in writing, notice of the meeting of stockholders shall be given by publication in a newspaper of general circulation in the place where the principal office of each merging state bank is located, at least once each week for four successive weeks, and by mail, at least fifteen days before the date of the meeting, to each stockholder of record of each merging state bank at his or her address on the books of his or her bank; no notice of publication need be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of stock. The notice shall state that dissenting stockholders will be entitled to payment of the value of only those shares which are voted against approval of the plan. [2011 c 336 § 749; 1955 c 33 § 30.49.050. Prior: 1953 c 234 § 5.]

Title 31

MISCELLANEOUS LOAN AGENCIES

Chapters

31.04 Consumer loan act.

- 31.12** Washington state credit union act.
31.20 Development credit corporations.
31.45 Check cashers and sellers.

Chapter 31.04 RCW
CONSUMER LOAN ACT

Sections

- 31.04.025 Application of chapter.
 31.04.027 Violations of chapter.
 31.04.143 Subpoena authority—Application—Contents—Notice—Fees.
 31.04.540 Loan advances—Eligibility and benefits under means-tested programs—Subject to federal law.

31.04.025 Application of chapter. (1) Each loan made to a resident of this state by a licensee, or persons subject to this chapter, is subject to the authority and restrictions of this chapter, unless such loan is made under the authority of chapter 63.14 RCW.

(2) This chapter does not apply to the following:

(a) Any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions;

(b) Entities making loans under chapter 19.60 RCW (pawnbroking);

(c) Entities making loans under chapter 63.14 RCW (retail installment sales of goods and services);

(d) Entities making loans under chapter 31.45 RCW (check cashers and sellers);

(e) Any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary residence;

(f) Any person making loans made to government or government agencies or instrumentalities or making loans to organizations as defined in the federal truth in lending act;

(g) Entities making loans under chapter 43.185 RCW (housing trust fund);

(h) Entities making loans under programs of the United States department of agriculture, department of housing and urban development, or other federal government program that provides funding or access to funding for single-family housing developments or grants to low-income individuals for the purchase or repair of single-family housing;

(i) Nonprofit housing organizations making loans, or loans made, under housing programs that are funded in whole or in part by federal or state programs if the primary purpose of the programs is to assist low-income borrowers with purchasing or repairing housing or the development of housing for low-income Washington state residents; and

(j) Entities making loans which are not residential mortgage loans under a credit card plan.

(3) The director may, at his or her discretion, waive applicability of the consumer loan company licensing provisions of this chapter to other persons, not including individuals subject to the S.A.F.E. act, making or servicing loans when the director determines it necessary to facilitate commerce and protect consumers. The director may adopt rules interpreting this section. [2011 c 191 § 1. Prior: 2009 c 311 § 1; 2009 c 120 § 3; 2008 c 78 § 1; 2001 c 81 § 2; 1991 c 208 § 4.]

Findings—Declaration—2009 c 120: See note following RCW 31.04.015.

Severability—2008 c 78: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 78 § 5.]

31.04.027 Violations of chapter. It is a violation of this chapter for a licensee, its officers, directors, employees, or independent contractors, or any other person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the consumer loan company may earn a fee or commission through the consumer loan company's best efforts to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Fail to make disclosures to loan applicants as required by RCW 31.04.102 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed with the department by a licensee or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(10) Accept from any borrower at or near the time a loan is made and in advance of any default an execution of, or induce any borrower to execute, any instrument of conveyance, not including a mortgage or deed of trust, to the lender of any ownership interest in the borrower's primary residence that is the security for the borrower's loan;

(11) Obtain at the time of closing a release of future damages for usury or other damages or penalties provided by law or a waiver of the provisions of this chapter; or

(12) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by that rate of interest or otherwise fail to comply with any requirement of the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226, the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act, 15 U.S.C. Sec. 1691 and regulation B, Sec. 202.9, 202.11, and 202.12, or any other applicable federal statute, as now or hereafter amended, in

any advertising of residential mortgage loans or any other consumer loan company activity. [2011 c 191 § 2; 2001 c 81 § 3.]

31.04.143 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

- (a) State that an order is sought under this section;
- (b) Adequately specify the documents, records, evidence, or testimony; and
- (c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 9.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

31.04.540 Loan advances—Eligibility and benefits under means-tested programs—Subject to federal law.

(1) To the extent that implementation of this section does not conflict with federal law resulting in the loss of federal funding, proprietary reverse mortgage loan advances made to a borrower must be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(2) Undisbursed reverse mortgage funds must be treated as equity in the borrower's home and not as proceeds from a loan, resources, or assets for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(3) This section applies to any law or program relating to payments, allowances, benefits, or services provided on a means-tested basis by this state including, but not limited to, optional state supplements to the federal supplemental security income program, low-income energy assistance, property tax relief, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, and medical assistance only to the extent this section does not conflict with Title 19 of the federal social security act. [2011 1st sp.s. c 36 § 15; 2010 1st sp.s. c 8 § 15; 2009 c 149 § 8.]

Findings—Intent—2011 1st sp.s. c 36: See RCW 74.62.005.

Effective date—2011 1st sp.s. c 36: See note following RCW 74.62.005.

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Chapter 31.12 RCW

WASHINGTON STATE CREDIT UNION ACT

Sections

31.12.402 Powers.

31.12.402 Powers. A credit union may:

- (1) Issue shares to and receive deposits from its members in accordance with RCW 31.12.416;
- (2) Make loans to its members in accordance with RCW 31.12.426 and 31.12.428;
- (3) Pay dividends and interest to its members in accordance with RCW 31.12.418;
- (4) Impose reasonable charges for the services it provides to its members;
- (5) Impose financing charges and reasonable late charges in the event of default on loans, subject to applicable law, and recover reasonable costs and expenses, including, but not limited to, collection costs, and reasonable attorneys' fees incurred both before and after judgment, incurred in the collection of sums due, if provided for in the note or agreement signed by the borrower;
- (6) Acquire, lease, hold, assign, pledge, sell, or otherwise dispose of interests in personal property and in real property in accordance with RCW 31.12.438;
- (7) Deposit and invest funds in accordance with RCW 31.12.436;
- (8) Borrow money, up to a maximum of fifty percent of its total shares, deposits, and net worth;
- (9) Discount or sell any of its assets, or purchase any or all of the assets of another credit union, out-of-state credit union, or federal credit union. However, a credit union may not discount or sell all, or substantially all, of its assets without the approval of the director;
- (10) Accept deposits of deferred compensation of its members;
- (11) Act as fiscal agent for and receive payments on shares and deposits from the federal government or this state, and any agency or political subdivision thereof;
- (12) Engage in activities and programs as requested by the federal government, this state, and any agency or political subdivision thereof, when the activities or programs are not inconsistent with this chapter;
- (13) Hold membership in credit unions, out-of-state credit unions, or federal credit unions and in organizations controlled by or fostering the interests of credit unions, including, but not limited to, a central liquidity facility organized under state or federal law;
- (14) Pay additional dividends and interest to members, or an interest rate refund to borrowers;
- (15) Enter into lease agreements, lease contracts, and lease-purchase agreements with members;
- (16) Act as insurance agent or broker for the sale to members of:
 - (a) Group life, accident, health, and credit life and disability insurance; and

(b) Other insurance that other types of Washington state-chartered financial institutions are permitted to sell, on the same terms and conditions that these institutions are permitted to sell such insurance;

(17) Impose a reasonable service charge for the administration and processing of accounts that remain dormant for a period of time specified by the credit union;

(18) Establish and operate on-premises or off-premises electronic facilities;

(19) Enter into formal or informal agreements with another credit union for the purpose of fostering the development of the other credit union;

(20) Work with community leaders to develop and prioritize efforts to improve the areas where their members reside by making investments in the community through contributions to organizations that primarily serve either a charitable, social, welfare, or educational purpose, or are exempt from taxation pursuant to section 501(c)(3) of the internal revenue code;

(21) Limit the personal liability of its directors in accordance with provisions of its articles of incorporation that conform with RCW 23B.08.320;

(22) Indemnify its directors, supervisory committee members, officers, employees, and others in accordance with provisions of its articles of incorporation or bylaws that conform with RCW 23B.08.500 through 23B.08.600;

(23) Conduct a promotional contest of chance as authorized in RCW 9.46.0356(l)(b), as long as the conditions of RCW 9.46.0356(5) and 30.22.260 are complied with to the satisfaction of the director; and

(24) Exercise such incidental powers as are necessary or convenient to enable it to conduct the business of a credit union. [2011 c 303 § 6; 2001 c 83 § 14; 1997 c 397 § 30. Prior: 1994 c 256 § 74; 1994 c 92 § 186; 1990 c 33 § 564; 1984 c 31 § 14. Formerly RCW 31.12.125.]

Findings—Intent—2011 c 303: See note following RCW 9.46.0356.

Findings—Construction—1994 c 256: See RCW 43.320.007.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Chapter 31.20 RCW

DEVELOPMENT CREDIT CORPORATIONS

Sections

31.20.050 Board of directors.

31.20.050 Board of directors. All the corporate powers of a development credit corporation shall be exercised by a board of not less than nine directors who shall be residents of this state. The number of directors and their term of office shall be determined by the stockholders at the first meeting held by the incorporators and at each annual meeting thereafter. In the first instance the directors shall be elected by the stockholders to serve until the first annual meeting. At the first annual meeting, and at each annual meeting thereafter, one-third of the directors shall be elected by a vote of the stockholders and the remaining two-thirds thereof shall be elected by members of the corporation herein provided for, each member having one vote. The removal of any director from this state shall immediately vacate his or her office. If

any vacancy occurs in the board of directors through death, resignation, or otherwise, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation. The directors shall be annually sworn to the proper discharge of their duties and they shall hold office until others are elected or appointed and qualified in their stead. [2011 c 336 § 750; 1959 c 213 § 5.]

Chapter 31.45 RCW

CHECK CASHERS AND SELLERS

Sections

31.45.103 Subpoena authority—Application—Contents—Notice—Fees.

31.45.103 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

(a) State that an order is sought under this section;

(b) Adequately specify the documents, records, evidence, or testimony; and

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 10.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

Title 32

MUTUAL SAVINGS BANKS

Chapters

32.08 Organization and powers.

32.12 Deposits—Earnings—Dividends—Interest.

32.16 Officers and employees.

32.32 Conversion of mutual savings bank to capital stock savings bank.

Chapter 32.08 RCW
ORGANIZATION AND POWERS

Sections

32.08.140 Powers of bank. (*Contingent effective date.*)

32.08.140 Powers of bank. (*Contingent effective date.*) Every mutual savings bank incorporated under this title shall have, subject to the restrictions and limitations contained in this title, the following powers:

(1) To receive deposits of money, to invest the same in the property and securities prescribed in this title, to declare dividends in the manner prescribed in this title, and to exercise by its board of trustees or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of a savings bank.

(2) To issue transferable certificates showing the amounts contributed by any incorporator or trustee to the guaranty fund of such bank, or for the purpose of paying its expenses. Every such certificate shall show that it does not constitute a liability of the savings bank, except as otherwise provided in this title.

(3) To purchase, hold and convey real property as prescribed in RCW 32.20.280.

(4) To pay depositors as hereinafter provided, and when requested, pay them by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge current rates of exchange for such drafts.

(5) To borrow money in pursuance of a resolution adopted by a vote of a majority of its board of trustees duly entered upon its minutes whereon shall be recorded by ayes and noes the vote of each trustee, for the purpose of repaying depositors, and to pledge or hypothecate securities as collateral for loans so obtained. Immediate written notice shall be given to the director of all amounts so borrowed, and of all assets so pledged or hypothecated.

(6) Subject to such regulations and restrictions as the director finds to be necessary and proper, to borrow money in pursuance of a resolution, policy, or other governing document adopted by its board of trustees, for purposes other than that of repaying depositors and to pledge or hypothecate its assets as collateral for any such loans, provided that no amount shall at any time be borrowed by a savings bank pursuant to this subsection (6), if such amount, together with the amount then remaining unpaid upon prior borrowings by such savings bank pursuant to this subsection (6), exceeds thirty percent of the assets of the savings bank.

The sale of securities or loans by a bank subject to an agreement to repurchase the securities or loans shall not be considered a borrowing. Borrowings from federal, state, or municipal governments or agencies or instrumentalities thereof shall not be subject to the limits of this subsection.

(7) To collect or protest promissory notes or bills of exchange owned by such bank or held by it as collateral, and remit the proceeds of the collections by drafts upon deposits to the credit of the savings bank in any city in the United States, and to charge the usual rates or fees for such collection and remittance for such protest.

(8) To sell gold or silver received in payment of interest or principal of obligations owned by the savings bank or from depositors in the ordinary course of business.

(9) To act as insurance agent for the purpose of writing fire insurance on property in which the bank has an insurable interest, the property to be located in the city in which the bank is situated and in the immediate contiguous suburbs, notwithstanding anything in any other statute to the contrary.

(10) To let vaults, safes, boxes or other receptacles for the safekeeping or storage of personal property, subject to laws and regulations applicable to, and with the powers possessed by, safe deposit companies.

(11) To elect or appoint in such manner as it may determine all necessary or proper officers, agents, boards, and committees, to fix their compensation, subject to the provisions of this title, and to define their powers and duties, and to remove them at will.

(12) To make and amend bylaws consistent with law for the management of its property and the conduct of its business.

(13) To wind up and liquidate its business in accordance with this title.

(14) To adopt and use a common seal and to alter the same at pleasure.

(15) To exercise any other power or authority permissible under applicable state or federal law exercised by other savings banks or by savings and loan associations with branches in Washington to the same extent as those savings institutions if, in the opinion of the director, the exercise of these powers and authorities by the other savings institutions affects the operations of savings banks in Washington or affects the delivery of financial services in Washington.

(16) To exercise the powers and authorities conferred by RCW 30.04.215.

(17) To exercise the powers and authorities that may be carried on by a subsidiary of the mutual savings bank that has been determined to be a prudent investment pursuant to RCW 32.20.380.

(18) To do all other acts authorized by this title.

(19) To exercise the powers and authorities that may be exercised by an insured state bank in compliance with 12 U.S.C. Sec. 1831a.

(20) To conduct a promotional contest of chance as authorized in RCW 9.46.0356(1)(b), as long as the conditions of RCW 9.46.0356(5) and 30.22.260 are complied with to the satisfaction of the director. [2011 c 303 § 8; 1999 c 14 § 17; 1996 c 2 § 23; 1994 c 92 § 319; 1981 c 86 § 2; 1977 ex.s. c 104 § 1; 1963 c 176 § 2; 1957 c 80 § 2; 1955 c 13 § 32.08.140. Prior: 1927 c 184 § 1; 1925 ex.s. c 86 § 1; 1915 c 175 § 10; RRS § 3322.]

Contingent effective date—2011 c 303 §§ 7 and 8: See note following RCW 30.08.140.

Findings—Intent—2011 c 303: See note following RCW 9.46.0356.

Additional notes found at www.leg.wa.gov

Chapter 32.12 RCW

DEPOSITS—EARNINGS—DIVIDENDS—INTEREST

Sections

32.12.120 Adverse claim to a deposit to be accompanied by court order or bond—Exceptions.

32.12.120 Adverse claim to a deposit to be accompanied by court order or bond—Exceptions. Notice to any mutual savings bank doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction, or other appropriate process against said bank from a court of competent jurisdiction in a cause therein instituted by him or her wherein the person to whose credit the deposit stands is made a party and served with summons or shall execute to said bank, in form and with sureties acceptable to it, a bond, in an amount which is double either the amount of said deposit or said adverse claim, whichever is the lesser, indemnifying said bank from any and all liability, loss, damage, costs, and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank: PROVIDED, That this law shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship as also the facts showing reasonable cause of belief on the part of said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant.

This section shall not apply to accounts subject to chapter 30.22 RCW. [2011 c 336 § 751; 1981 c 192 § 31; 1963 c 176 § 13. Cf. 1961 c 280 § 4; RCW 30.20.090.]

Additional notes found at www.leg.wa.gov

Chapter 32.16 RCW OFFICERS AND EMPLOYEES

Sections

32.16.010	Board of trustees—Number—Qualifications.
32.16.012	Age requirements.
32.16.130	Conversion of savings and loan association to mutual savings bank—Director may serve as trustee.

32.16.010 Board of trustees—Number—Qualifications. (1) There shall be a board of trustees who shall have the entire management and control of the affairs of the savings bank. The persons named in the certificate of authorization shall be the first trustees. The board shall consist of not less than nine nor more than thirty members.

(2) A person shall not be a trustee of a savings bank, if he or she:

- Is not a resident of a state of the United States;
- Has been adjudicated a bankrupt or has taken the benefit of any insolvency law, or has made a general assignment for the benefit of creditors;
- Has suffered a judgment recovered against him or her for a sum of money to remain unsatisfied of record or unsecured on appeal for a period of more than three months;
- Is a trustee, officer, clerk, or other employee of any other savings bank.

(3) Nor shall a person be a trustee of a savings bank solely by reason of his or her holding public office. [2011 c 336 § 752; 1985 c 56 § 8; 1955 c 13 § 32.16.010. Prior: 1915 c 175 § 28; RRS § 3357.]

32.16.012 Age requirements. The bylaws of a savings bank may prescribe a maximum age beyond which no person shall be eligible for election to the board of trustees and may prescribe a mandatory retirement age of seventy-five years or less for trustees subject to the following limitations:

(1) No person shall be eligible for initial election as a trustee after December 31, 1969, who is seventy years of age or more; and

(2) No person shall continue to serve as a trustee after December 31, 1973, who is seventy-five years of age or more and the office of any such trustee shall become vacant on the last day of the month in which the trustee reaches his or her seventy-fifth birthday or December 31, 1973, whichever is the latest.

If a savings bank does not adopt a bylaw prescribing a mandatory retirement age for trustees prior to January 1, 1970, or does not maintain thereafter a bylaw prescribing a mandatory retirement age, the office of a trustee of such savings bank shall become vacant on the last day of the month in which such trustee reaches his or her seventieth birthday or on December 31, 1969, whichever is the latest. [2011 c 336 § 753; 1969 c 55 § 14.]

32.16.130 Conversion of savings and loan association to mutual savings bank—Director may serve as trustee. In the event a savings and loan association is converted to a mutual savings bank, any person, who at the time of such conversion was a director of the savings and loan association, may serve as a trustee of the mutual savings bank until he or she reaches the age of seventy-five years or until one year following the date of conversion of such savings and loan association, whichever is later. The bylaws of any mutual savings bank may modify this provision by requiring earlier retirement of any trustee affected hereby. [2011 c 336 § 754; 1971 ex.s. c 222 § 2.]

Additional notes found at www.leg.wa.gov

Chapter 32.32 RCW CONVERSION OF MUTUAL SAVINGS BANK TO CAPITAL STOCK SAVINGS BANK

Sections

32.32.025	Definitions.
32.32.045	Stock purchase subscription rights—Eligible account holders.

32.32.025 Definitions. As used in this chapter, the following definitions apply, unless the context otherwise requires:

(1) Except as provided in RCW 32.32.230, an "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) The term "amount," when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(3) An "applicant" is a mutual savings bank which has applied to convert pursuant to this chapter.

(4) The term "associate," when used to indicate a relationship with any person, means (a) any corporation or orga-

nization (other than the applicant or a majority-owned subsidiary of the applicant) of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities, (b) any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity, and (c) any relative who would be a "class A beneficiary" if the person were a decedent.

(5) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(6) The term "capital stock" includes permanent stock, guaranty stock, permanent reserve stock, any similar certificate evidencing nonwithdrawable capital, or preferred stock, of a savings bank converted under this chapter or of a subsidiary institution or holding company.

(7) The term "charter" includes articles of incorporation, articles of reincorporation, and certificates of incorporation, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated person.

(8) Except as provided in RCW 32.32.230, the term "control" (including the terms "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(9) The term "dealer" means any person who engages either for all or part of his or her time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(10) The term "deposits" refers to the deposits of a savings bank that is converting under this chapter, and may refer in addition to the deposits or share accounts of any other financial institution that is converting to the stock form in connection with a merger with and into a savings bank.

(11) The term "director" means any director of a corporation, any trustee of a mutual savings bank, or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(12) The term "eligibility record date" means the record date for determining eligible account holders of a converting mutual savings bank.

(13) The term "eligible account holder" means any person holding a qualifying deposit as determined in accordance with RCW 32.32.180.

(14) The term "employee" does not include a director or officer.

(15) The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

(16) The term "market maker" means a dealer who, with respect to a particular security, (a) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (b) furnishes bona fide competitive bid and offer quotations on request; and (c) is ready, willing, and able to effect transaction in reasonable quantities at his or her quoted prices with other brokers or dealers.

(17) The term "material," when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant.

(18) The term "mutual savings bank" means a mutual savings bank organized and operating under Title 32 RCW.

(19) Except as provided in RCW 32.32.435, the term "offer," "offer to sell," or "offer of sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(20) The term "officer," for purposes of the purchase of stock in a conversion under this chapter or the sale of this stock, means the chair of the board, president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(21) Except as provided in RCW 32.32.435, the term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(22) The term "proxy" includes every form of authorization by which a person is or may be deemed to be designated to act for a stockholder in the exercise of his or her voting rights in the affairs of an institution. Such an authorization may take the form of failure to dissent or object.

(23) The terms "purchase" and "buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(24) The terms "sale" and "sell" include every contract to sell or otherwise dispose of a security or interest in a security for value; but these terms do not include an exchange of securities in connection with a merger or acquisition approved by the director.

(25) The term "savings account" means deposits established in a mutual savings bank and includes certificates of deposit.

(26) Except as provided in RCW 32.32.435, the term "security" includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase any of the foregoing.

(27) The term "series of preferred stock" refers to a subdivision, within a class of preferred stock, each share of which has preferences, limitations, and relative rights identical with those of other shares of the same series.

(28) The term "subscription offering" refers to the offering of shares of capital stock, through nontransferable subscription rights issued to: (a) Eligible account holders as required by RCW 32.32.045; (b) supplemental eligible account holders as required by RCW 32.32.055; (c) directors, officers, and employees, as permitted by RCW 32.32.140;

and (d) eligible account holders and supplemental eligible account holders as permitted by RCW 32.32.145.

(29) A "subsidiary" of a specified person is an affiliate controlled by the person, directly or indirectly through one or more intermediaries.

(30) The term "supplemental eligibility record date" means the supplemental record date for determining supplemental eligible account holders of a converting savings bank required by RCW 32.32.055. The date shall be the last day of the calendar quarter preceding director approval of the application for conversion.

(31) The term "supplemental eligible account holder" means any person holding a qualifying deposit, except officers, directors, and their associates, as of the supplemental eligibility record date.

(32) The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but the term does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which that person is the underwriter.

Terms defined in other chapters of this title, when used in this chapter, shall have the meanings given in those definitions, to the extent those definitions are not inconsistent with the definitions contained in this chapter unless the context otherwise requires. [2011 c 336 § 755; 1995 c 134 § 7. Prior: 1994 c 256 § 105; 1994 c 92 § 352; 1985 c 56 § 16; 1981 c 85 § 4.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

32.32.045 Stock purchase subscription rights—Eligible account holders. Each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greatest of two hundred shares, one-tenth of one percent of the total offering of shares, or fifteen times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting savings bank. If the allotment made in this section results in an oversubscription, shares shall be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his or her total allocation equal to one hundred shares. Any shares not so allocated shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion. [2011 c 336 § 756; 1981 c 85 § 8.]

Title 33

SAVINGS AND LOAN ASSOCIATIONS

Chapters

33.16 Directors, officers, and employees.

33.20 Members—Savings.

Chapter 33.16 RCW

DIRECTORS, OFFICERS, AND EMPLOYEES

Sections

33.16.020	Directors—Qualifications—Eligibility.
33.16.050	Removal of director for cause—When—Procedure.
33.16.090	Board meetings—Notice—Quorum.

33.16.020 Directors—Qualifications—Eligibility.

The board of directors shall be elected at the annual meeting, unless the bylaws of the association otherwise provide.

A person shall not be a director of an association if the person has been adjudicated bankrupt or has taken the benefit of any assignment for the benefit of creditors or has suffered a judgment recovered against him or her for a sum of money to remain unsatisfied of record or superseded on appeal for a period of more than three months.

To be eligible to hold the position of director of an association, a person must have savings or stock or a combination thereof in the sum or the aggregate sum of at least one thousand dollars. Such minimum amount shall not be reduced either by withdrawal or by pledge for a loan or in any other manner, so long as he or she remains a director of the association. [2011 c 336 § 757; 1982 c 3 § 28; 1963 c 246 § 5; 1945 c 235 § 15; Rem. Supp. 1945 § 3717-134. Prior: 1933 c 183 §§ 12, 14; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4.]

Additional notes found at www.leg.wa.gov

33.16.050 Removal of director for cause—When—Procedure. If a director becomes ineligible or if the director's conduct or habits are such as to reflect discredit upon the association or if other good cause exists, the director may be removed from office by an affirmative vote of two-thirds of the members of the board of directors at any regular meeting of the board or at any special meeting called for that purpose. No such vote upon removal of a director shall be taken until the director has been advised of the reasons therefor and has had opportunity to submit to the board of directors a statement relative thereto, either oral or written. If the director affected is present at the meeting, he or she shall leave the place where the meeting is being held after his or her statement has been submitted and prior to the vote upon the matter of his or her removal. [2011 c 336 § 758; 1982 c 3 § 31; 1945 c 235 § 19; Rem. Supp. 1945 § 3717-138. Prior: 1933 c 183 § 17; 1925 ex.s. c 144 § 3; 1919 c 169 § 3; 1913 c 110 § 4.]

Additional notes found at www.leg.wa.gov

33.16.090 Board meetings—Notice—Quorum. The board of directors of each association shall hold a regular meeting at least once each quarter and whenever required by the director, at a time to be designated by it. Special meetings

of the board of directors may be held upon notice to each director sufficient to permit his or her attendance.

At any meeting of the board of directors, a majority of the members shall constitute a quorum for the transaction of business.

The president of the association or chair of the board or any three members of the board may call a meeting of the board by giving notice to all of the directors. [2011 c 336 § 759; 1994 c 256 § 123; 1982 c 3 § 34; 1945 c 235 § 23; Rem. Supp. 1945 § 3717-142. Prior: 1933 c 183 § 19.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

Chapter 33.20 RCW MEMBERS—SAVINGS

Sections

- 33.20.010 Mutual association member's interest in assets—Meetings—Voting—Proxies.
33.20.040 Minors as members.

33.20.010 Mutual association member's interest in assets—Meetings—Voting—Proxies. Each member having deposits in a mutual association shall have a proportionate proprietary interest in its assets or net earnings subordinate to the claims of its other creditors. At any meeting of the members of a mutual association, each member shall be entitled to at least one vote. A mutual association, by its bylaws, may provide that each member shall be entitled to one vote for each one hundred dollars of the member's deposit account. At any meeting of the members, voting may be in person or by proxy. Proxies shall be in writing and signed by the member and, when filed with the secretary, shall continue in force until revoked or superseded by subsequent proxies. Written notice of the time and place of the holding of special meetings (other than the regular annual meeting) shall be mailed to each member at his or her last known address not more than thirty days, nor less than ten days prior to the meeting. The regular annual meeting of the mutual association shall be announced by publication of a notice thereof in a newspaper published in the city or town, or, if the association is not in a city or town, in the county in which the association is located at least ten days prior to the date of such meeting, or by ten days' written notice to the members mailed to the last known address of each member. [2011 c 336 § 760; 1982 c 3 § 37; 1969 c 107 § 4; 1949 c 20 § 2; 1945 c 235 § 12; Rem. Supp. 1949 § 3717-131. Prior: 1933 c 183 §§ 13, 39; 1919 c 169 § 4; 1913 c 110 § 5; 1903 c 116 § 6; 1890 p 56 § 39.]

Additional notes found at www.leg.wa.gov

33.20.040 Minors as members. Subject to chapter 30.22 RCW, minors may become depositors or members of an association and all contracts entered into between a minor and an association, with respect to his or her membership or his or her deposits therein, shall be valid and enforceable, and a minor may not disaffirm, because of his or her minority, any such membership or agreement in connection therewith. [2011 c 336 § 761; 1982 c 3 § 38; 1981 c 192 § 30; 1945 c 235 § 41; Rem. Supp. 1945 § 3717-160. Prior: 1933 c 183 §§ 24, 40; 1919 c 169 § 5; 1913 c 110 § 6.]

[2011 RCW Supp—page 656]

Additional notes found at www.leg.wa.gov

Title 34 ADMINISTRATIVE LAW

Chapters

- 34.05 Administrative procedure act.**
34.12 Office of administrative hearings.

Chapter 34.05 RCW

ADMINISTRATIVE PROCEDURE ACT

Sections

- 34.05.010 Definitions.
34.05.030 Exclusions from chapter or parts of chapter.
34.05.110 Violations of state law or agency rule by small businesses—Notice requirements—Waiver of penalty for first-time paperwork violations.
34.05.210 Code and register—Publication and distribution—Omissions, removals, revisions—Judicial notice.
34.05.310 Prenotice inquiry—Negotiated and pilot rules.
34.05.328 Significant legislative rules, other selected rules.
34.05.350 Emergency rules and amendments.

34.05.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

(2) "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include an agency decision regarding (a) contracting or procurement of goods, services, public works, and the purchase, lease, or acquisition by any other means, including eminent domain, of real estate, as well as all activities necessarily related to those functions, or (b) determinations as to the sufficiency of a showing of interest filed in support of a representation petition, or mediation or conciliation of labor disputes or arbitration of labor disputes under a collective bargaining law or similar statute, or (c) any sale, lease, contract, or other proprietary decision in the management of public lands or real property interests, or (d) the granting of a license, franchise, or permission for the use of

trademarks, symbols, and similar property owned or controlled by the agency.

(4) "Agency head" means the individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. If the agency head is a body of individuals, a majority of those individuals constitutes the agency head.

(5) "Entry" of an order means the signing of the order by all persons who are to sign the order, as an official act indicating that the order is to be effective.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(7) "Institutions of higher education" are the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, the various community colleges, and the governing boards of each of the above, and the various colleges, divisions, departments, or offices authorized by the governing board of the institution involved to act for the institution, all of which are sometimes referred to in this chapter as "institutions."

(8) "Interpretive statement" means a written expression of the opinion of an agency, entitled an interpretive statement by the agency head or its designee, as to the meaning of a statute or other provision of law, of a court decision, or of an agency order.

(9)(a) "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law, but does not include (i) a license required solely for revenue purposes, or (ii) a certification of an exclusive bargaining representative, or similar status, under a collective bargaining law or similar statute, or (iii) a license, franchise, or permission for use of trademarks, symbols, and similar property owned or controlled by the agency.

(b) "Licensing" includes the agency process respecting the issuance, denial, revocation, suspension, or modification of a license.

(10) "Mail" or "send," for purposes of any notice relating to rule making or policy or interpretive statements, means regular mail or electronic distribution, as provided in RCW 34.05.260. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(11)(a) "Order," without further qualification, means a written statement of particular applicability that finally determines the legal rights, duties, privileges, immunities, or other legal interests of a specific person or persons.

(b) "Order of adoption" means the official written statement by which an agency adopts, amends, or repeals a rule.

(12) "Party to agency proceedings," or "party" in a context so indicating, means:

(a) A person to whom the agency action is specifically directed; or

(b) A person named as a party to the agency proceeding or allowed to intervene or participate as a party in the agency proceeding.

(13) "Party to judicial review or civil enforcement proceedings," or "party" in a context so indicating, means:

(a) A person who files a petition for a judicial review or civil enforcement proceeding; or

(b) A person named as a party in a judicial review or civil enforcement proceeding, or allowed to participate as a party in a judicial review or civil enforcement proceeding.

(14) "Person" means any individual, partnership, corporation, association, governmental subdivision or unit thereof, or public or private organization or entity of any character, and includes another agency.

(15) "Policy statement" means a written description of the current approach of an agency, entitled a policy statement by the agency head or its designee, to implementation of a statute or other provision of law, of a court decision, or of an agency order, including where appropriate the agency's current practice, procedure, or method of action based upon that approach.

(16) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his or her designee where notice of such restrictions is given by official traffic control devices, or (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes.

(17) "Rules review committee" or "committee" means the joint administrative rules review committee created pursuant to RCW 34.05.610 for the purpose of selectively reviewing existing and proposed rules of state agencies.

(18) "Rule making" means the process for formulation and adoption of a rule.

(19) "Service," except as otherwise provided in this chapter, means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic telefacsimile transmission, where copies are mailed simultaneously, or by commercial parcel delivery company. [2011 c 336 § 762; 1997 c 126 § 2; 1992 c 44 § 10; 1989 c 175 § 1; 1988 c 288 § 101; 1982 c 10 § 5. Prior: 1981 c 324 § 2; 1981 c 183 § 1; 1967 c 237 § 1; 1959 c 234 § 1. Formerly RCW 34.04.010.]

Additional notes found at www.leg.wa.gov

34.05.030 Exclusions from chapter or parts of chapter. (1) This chapter shall not apply to:

(a) The state militia, or
 (b) The board of clemency and pardons, or
 (c) The department of corrections or the indeterminate sentencing review board with respect to persons who are in their custody or are subject to the jurisdiction of those agencies.

(2) The provisions of RCW 34.05.410 through 34.05.598 shall not apply:

(a) To adjudicative proceedings of the board of industrial insurance appeals except as provided in RCW 7.68.110 and 51.48.131;

(b) Except for actions pursuant to chapter 46.29 RCW, to the denial, suspension, or revocation of a driver's license by the department of licensing;

(c) To the department of labor and industries where another statute expressly provides for review of adjudicative proceedings of a department action, order, decision, or award before the board of industrial insurance appeals;

(d) To actions of the Washington personnel resources board, the human resources director, or the office of financial management and the department of enterprise services when carrying out their duties under chapter 41.06 RCW;

(e) To adjustments by the department of revenue of the amount of the surcharge imposed under RCW 82.04.261; or

(f) To the extent they are inconsistent with any provisions of chapter 43.43 RCW.

(3) Unless a party makes an election for a formal hearing pursuant to RCW 82.03.140 or 82.03.190, RCW 34.05.410 through 34.05.598 do not apply to a review hearing conducted by the board of tax appeals.

(4) The rule-making provisions of this chapter do not apply to:

(a) Reimbursement unit values, fee schedules, arithmetic conversion factors, and similar arithmetic factors used to determine payment rates that apply to goods and services purchased under contract for clients eligible under chapter 74.09 RCW; and

(b) Adjustments by the department of revenue of the amount of the surcharge imposed under RCW 82.04.261.

(5) All other agencies, whether or not formerly specifically excluded from the provisions of all or any part of the administrative procedure act, shall be subject to the entire act. [2011 1st sp.s. c 43 § 431; 2006 c 300 § 4; 2002 c 354 § 225; 1994 c 39 § 1; 1993 c 281 § 15; 1989 c 175 § 2; 1988 c 288 § 103; 1984 c 141 § 8; 1982 c 221 § 6; 1981 c 64 § 2; 1979 c 158 § 90; 1971 ex.s. c 57 § 17; 1971 c 21 § 1; 1967 ex.s. c 71 § 1; 1967 c 237 § 7; 1963 c 237 § 1; 1959 c 234 § 15. Formerly RCW 34.04.150.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective dates—Contingent effective date—2006 c 300: See note following RCW 82.04.261.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Additional notes found at www.leg.wa.gov

34.05.110 Violations of state law or agency rule by small businesses—Notice requirements—Waiver of penalty for first-time paperwork violations. (1) Agencies

[2011 RCW Supp—page 658]

must provide to a small business a copy of the state law or agency rule that a small business is violating and a period of at least seven calendar days to correct the violation before the agency may impose any fines, civil penalties, or administrative sanctions for a violation of a state law or agency rule by a small business. If no correction is possible or if an agency is acting in response to a complaint made by a third party and the third party would be disadvantaged by the application of this subsection, the requirements in this subsection do not apply.

(2) Except as provided in subsection (4) of this section, agencies shall waive any fines, civil penalties, or administrative sanctions for first-time paperwork violations by a small business.

(3) When an agency waives a fine, penalty, or sanction under this section, when possible it shall require the small business to correct the violation within a reasonable period of time, in a manner specified by the agency. If correction is impossible, no correction may be required and failure to correct is not grounds for reinstatement of fines, penalties, or sanctions under subsection (5)(b) of this section.

(4) Exceptions to requirements of subsection (1) of this section and the waiver requirement in subsection (2) of this section may be made for any of the following reasons:

(a) The agency head determines that the effect of the violation or waiver presents a direct danger to the public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest;

(b) The violation involves a knowing or willful violation;

(c) The violation is of a requirement concerning the assessment, collection, or administration of any tax, tax program, debt, revenue, receipt, a regulated entity's financial filings, or insurance rate or form filing;

(d) The requirements of this section are in conflict with federal law or program requirements, federal requirements that are a prescribed condition to the allocation of federal funds to the state, or the requirements for eligibility of employers in this state for federal unemployment tax credits, as determined by the agency head;

(e) The small business committing the violation previously violated a substantially similar requirement; or

(f) The owner or operator of the small business committing the violation owns or operates, or owned or operated a different small business which previously violated a substantially similar requirement.

(5)(a) Nothing in this section prohibits an agency from waiving fines, civil penalties, or administrative sanctions incurred by a small business for a paperwork violation that is not a first-time offense.

(b) Any fine, civil penalty, or administrative sanction that is waived under this section may be reinstated and imposed in addition to any additional fines, penalties, or administrative sanctions associated with a subsequent violation for noncompliance with a substantially similar paperwork requirement, or failure to correct the previous violation as required by the agency under subsection (3) of this section.

(6) Nothing in this section may be construed to diminish the responsibility for any citizen or business to apply for and obtain a permit, license, or authorizing document that is

required to engage in a regulated activity, or otherwise comply with state or federal law.

(7) Nothing in this section shall be construed to apply to small businesses required to provide accurate and complete information and documentation in relation to any claim for payment of state or federal funds or who are licensed or certified to provide care and services to vulnerable adults or children.

(8) Nothing in this section affects the attorney general's authority to impose fines, civil penalties, or administrative sanctions as otherwise authorized by law; nor shall this section affect the attorney general's authority to enforce the consumer protection act, chapter 19.86 RCW.

(9) As used in this section:

(a) "Small business" means a business with two hundred fifty or fewer employees or a gross revenue of less than seven million dollars annually as reported on its most recent federal income tax return or its most recent return filed with the department of revenue.

(b) "Paperwork violation" means the violation of any statutory or regulatory requirement that mandates the collection of information by an agency, or the collection, posting, or retention of information by a small business. This includes but is not limited to requirements in the Revised Code of Washington, the Washington Administrative Code, the Washington State Register, or any other agency directive.

(c) "First-time paperwork violation" means the first instance of a particular or substantially similar paperwork violation. [2011 c 18 § 1; 2010 c 194 § 1; 2009 c 358 § 1.]

34.05.210 Code and register—Publication and distribution—Omissions, removals, revisions—Judicial notice.

(1)(a) The code reviser shall cause the Washington Administrative Code to be compiled, indexed by subject, and published. All current, permanently effective rules of each agency shall be published in the Washington Administrative Code. Compilations shall be supplemented or revised as often as necessary and at least annually in a form compatible with the main compilation.

(b) The statute law committee, in its discretion, may publish the official copy of the Washington Administrative Code in a digital format on the code reviser or legislative web site.

(c) The code reviser shall provide a paper copy of the entire Washington Administrative Code or any section or sections of the code upon request. The code reviser may charge a minimal fee sufficient to cover costs of printing and mailing the paper copy.

(d) The code reviser shall provide a limited number of free paper copies of the Washington Administrative Code to libraries or institutions on request for access and archival purposes.

(2) Subject to the provisions of this chapter, the code reviser shall prescribe a uniform numbering system, form, and style for all proposed and adopted rules.

(3) The code reviser shall publish a register setting forth the text of all rules filed during the appropriate register publication period.

(4) The code reviser may omit from the register or the compilation, rules that would be unduly cumbersome, expensive, or otherwise inexpedient to publish, if such rules are made available in printed or processed form on application to

the adopting agency, and if the register or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(5) The code reviser may edit and revise rules for publication, codification, and compilation, without changing the meaning of any such rule.

(6) When a rule, in whole or in part, is declared invalid and unconstitutional by a court of final appeal, the adopting agency shall give notice to that effect in the register. With the consent of the attorney general, the code reviser may remove obsolete rules or parts of rules from the Washington Administrative Code when:

(a) The rules are declared unconstitutional by a court of final appeal; or

(b) The adopting agency ceases to exist and the rules are not transferred by statute to a successor agency.

(7) Compilations and registers shall be made available for purchase, in print or tangible, digital format, at a price fixed by the code reviser.

(8) The board of law library trustees of each county shall keep and maintain a complete and current set of registers and compilations when required for use and inspection as provided in chapter 27.24 RCW. If the register or compilation is published in digital format on the code reviser or legislative web site, providing on-site access to the digital version of the register shall satisfy the requirements of this subsection for access to the register.

(9) Judicial notice shall be taken of rules filed and published as provided in RCW 34.05.380 and this section. [2011 c 156 § 4; 2007 c 456 § 3; 1988 c 288 § 201; 1982 1st ex.s. c 32 § 7; 1980 c 186 § 12; 1977 ex.s. c 240 § 9; 1959 c 234 § 5. Formerly RCW 34.04.050.]

Purpose—Finding—Intent—2011 c 156: See note following RCW 1.08.080.

Nonbinding effect of unpublished rules and procedures: RCW 42.56.040.

Additional notes found at www.leg.wa.gov

34.05.310 Prenotice inquiry—Negotiated and pilot rules.

(1)(a) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies must solicit comments from the public on a subject of possible rule making before filing with the code reviser a notice of proposed rule making under RCW 34.05.320. The agency must prepare a statement of inquiry that:

(i) Identifies the specific statute or statutes authorizing the agency to adopt rules on this subject;

(ii) Discusses why rules on this subject may be needed and what they might accomplish;

(iii) Identifies other federal and state agencies that regulate this subject, and describes the process whereby the agency would coordinate the contemplated rule with these agencies;

(iv) Discusses the process by which the rule might be developed, including, but not limited to, negotiated rule making, pilot rule making, or agency study;

(v) Specifies the process by which interested parties can effectively participate in the decision to adopt a new rule and formulation of a proposed rule before its publication.

(b) The statement of inquiry must be filed with the code reviser for publication in the state register at least thirty days

before the date the agency files notice of proposed rule making under RCW 34.05.320 and the statement, or a summary of the information contained in that statement, must be sent to any party that has requested receipt of the agency's statements of inquiry.

(2) Agencies are encouraged to develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule. Examples of new procedures include, but are not limited to:

(a) Negotiated rule making by which representatives of an agency and of the interests that are affected by a subject of rule making, including, where appropriate, county and city representatives, seek to reach consensus on the terms of the proposed rule and on the process by which it is negotiated; and

(b) Pilot rule making which includes testing the feasibility of complying with or administering draft new rules or draft amendments to existing rules through the use of volunteer pilot groups in various areas and circumstances, as provided in RCW 34.05.313 or as otherwise provided by the agency.

(3)(a) An agency must make a determination whether negotiated rule making, pilot rule making, or another process for generating participation from interested parties prior to development of the rule is appropriate.

(b) An agency must include a written justification in the rule-making file if an opportunity for interested parties to participate in the rule-making process prior to publication of the proposed rule has not been provided.

(4) This section does not apply to:

(a) Emergency rules adopted under RCW 34.05.350;

(b) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(c) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(d) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(e) Rules the content of which is explicitly and specifically dictated by statute;

(f) Rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045; or

(g) Rules that adopt, amend, or repeal:

(i) A procedure, practice, or requirement relating to agency hearings; or

(ii) A filing or related process requirement for applying to an agency for a license or permit. [2011 c 298 § 20; 2004 c 31 § 1; 1995 c 403 § 301; 1994 c 249 § 1; 1993 c 202 § 2; 1989 c 175 § 5; 1988 c 288 § 301.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

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

Finding—Intent—1993 c 202: "The legislature finds that while the 1988 Administrative Procedure Act expanded public participation in the agency rule-making process, there continue to be instances when participants have developed adversarial relationships with each other, resulting in the inability to identify all of the issues, the failure to focus on solutions to problems, unnecessary delays, litigation, and added cost to the agency, affected parties, and the public in general.

When interested parties work together, it is possible to negotiate development of a rule that is acceptable to all affected, and that conforms to the intent of the statute the rule is intended to implement.

After a rule is adopted, unanticipated negative impacts may emerge. Examples include excessive costs of administration for the agency and compliance by affected parties, technical conditions that may be physically or economically unfeasible to meet, problems of interpretation due to lack of clarity, and reporting requirements that duplicate or conflict with those already in place.

It is therefore the intent of the legislature to encourage flexible approaches to developing administrative rules, including but not limited to negotiated rule making and a process for testing the feasibility of adopted rules, often called the pilot rule process. However, nothing in chapter 202, Laws of 1993 shall be construed to create any mandatory duty for an agency to use the procedures in RCW 34.05.310 or 34.05.313 in any particular instance of rule making. Agencies shall determine, in their discretion, when it is appropriate to use these procedures." [1993 c 202 § 1.]

Rules coordinator duties regarding business: RCW 43.17.310.

Additional notes found at www.leg.wa.gov

34.05.328 Significant legislative rules, other selected rules. (1) Before adopting a rule described in subsection (5) of this section, an agency must:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice must include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis must be available when the rule is adopted under RCW 34.05.360;

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency must place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency must place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan must describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency must do all of the following:

(a) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(a), the agency must report to the legislature pursuant to (b) of this subsection;

(b) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and to the legislative rules of the

department of fish and wildlife implementing chapter 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045;

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents; or

(viii) Rules of the department of revenue that adopt a uniform expiration date for reseller permits as authorized in RCW 82.32.780 and 82.32.783.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency must state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of regulatory assistance, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, must report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report must document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section. [2011 c 298 § 21; 2011 c 149 § 1; 2010 c 112 § 15. Prior: 2003 c 165 § 2; 2003 c 39 § 13; 1997 c 430 § 1; 1995 c 403 § 201.]

Reviser's note: This section was amended by 2011 c 149 § 1 and by 2011 c 298 § 21, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Effective date—2011 c 149: See note following RCW 43.42.010.

Effective date—2010 c 112 §§ 2, 3, 11, 12, and 15: See note following RCW 82.32.780.

Retroactive application—2010 c 112: See note following RCW 82.32.780.

Findings—Short title—Intent—1995 c 403: "(1) The legislature finds that:

(a) One of its fundamental responsibilities, to the benefit of all the citizens of the state, is the protection of public health and safety, including health and safety in the workplace, and the preservation of the extraordinary natural environment with which Washington is endowed;

(b) Essential to this mission is the delegation of authority to state agencies to implement the policies established by the legislature; and that the adoption of administrative rules by these agencies helps assure that these policies are clearly understood, fairly applied, and uniformly enforced;

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

(2) The legislature therefore enacts chapter 403, Laws of 1995, to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth. To that end, it is the intent of the legislature, in the adoption of chapter 403, Laws of 1995, that:

(a) Unless otherwise authorized, substantial policy decisions affecting the public be made by those directly accountable to the public, namely the legislature, and that state agencies not use their administrative authority to create or amend regulatory programs;

(b) When an agency is authorized to adopt rules imposing obligations on the public, that it do so responsibly: The rules it adopts should be justified and reasonable, with the agency having determined, based on common sense criteria established by the legislature, that the obligations imposed are truly in the public interest;

(c) Governments at all levels better coordinate their regulatory efforts to avoid confusing and frustrating the public with overlapping or contradictory requirements;

(d) The public respect the process whereby administrative rules are adopted, whether or not they agree with the result: Members of the public affected by administrative rules must have the opportunity for a meaningful role in their development; the bases for agency action must be legitimate and clearly articulated;

(e) Members of the public have adequate opportunity to challenge administrative rules with which they have legitimate concerns through meaningful review of the rule by the executive, the legislature, and the judiciary. While it is the intent of the legislature that upon judicial review of a rule, a court should not substitute its judgment for that of an administrative agency, the court should determine whether the agency decision making was rigorous and deliberative; whether the agency reached its result through a process of reason; and whether the agency took a hard look at the rule before its adoption;

(f) In order to achieve greater compliance with administrative rules at less cost, that a cooperative partnership exist between agencies and regulated parties that emphasizes education and assistance before the imposition of penalties; and

(g) Workplace safety and health in this state not be diminished, whether provided by constitution, by statute, or by rule." [1995 c 403 § 1.]

Expedited adoption: RCW 34.05.353.

Additional notes found at www.leg.wa.gov

34.05.350 Emergency rules and amendments. (1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

(2) An emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective.

(3) Within seven days after the rule is adopted, any person may petition the governor requesting the immediate

repeal of a rule adopted on an emergency basis by any department listed in RCW 43.17.010. Within seven days after submission of the petition, the governor shall either deny the petition in writing, stating his or her reasons for the denial, or order the immediate repeal of the rule. In ruling on the petition, the governor shall consider only whether the conditions in subsection (1) of this section were met such that adoption of the rule on an emergency basis was necessary. If the governor orders the repeal of the emergency rule, any sanction imposed based on that rule is void. This subsection shall not be construed to prohibit adoption of any rule as a permanent rule. [2011 1st sp.s. c 2 § 1; 2009 c 559 § 1; 1994 c 249 § 3; 1989 c 175 § 10; 1988 c 288 § 309; 1981 c 324 § 4; 1977 ex.s. c 240 § 8; 1959 c 234 § 3. Formerly RCW 34.04.030.]

Effective date—2011 1st sp.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 31, 2011]." [2011 1st sp.s. c 2 § 2.]

Effective date—2009 c 559: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 19, 2009]." [2009 c 559 § 2.]

Additional notes found at www.leg.wa.gov

Chapter 34.12 RCW

OFFICE OF ADMINISTRATIVE HEARINGS

Sections

- 34.12.060 Initial decision or proposal for decision—Findings of fact and conclusions of law—Inapplicability to state patrol disciplinary hearings.
- 34.12.100 Salaries.
- 34.12.140 Transfers and payments into revolving fund—Limitation on employment security department payments—Allotment by director of financial management—Disbursements from fund by voucher.

34.12.060 Initial decision or proposal for decision—Findings of fact and conclusions of law—Inapplicability to state patrol disciplinary hearings. When an administrative law judge presides at a hearing under this chapter and a majority of the officials of the agency who are to render the final decision have not heard substantially all of the oral testimony and read all exhibits submitted by any party, it shall be the duty of such judge, or in the event of his or her unavailability or incapacity, of another judge appointed by the chief administrative law judge, to issue an initial decision or proposal for decision including findings of fact and conclusions of law in accordance with RCW 34.05.461 or 34.05.485. However, this section does not apply to a state patrol disciplinary hearing conducted under RCW 43.43.090. [2011 c 336 § 763; 1989 c 175 § 34; 1984 c 141 § 7; 1982 c 189 § 2; 1981 c 67 § 6.]

Additional notes found at www.leg.wa.gov

34.12.100 Salaries. The chief administrative law judge shall be paid a salary fixed by the governor after recommendation of the human resources director in the office of financial management. The salaries of administrative law judges appointed under the terms of this chapter shall be determined by the chief administrative law judge after recommendation of the department of personnel. [2011 1st sp.s. c 43 § 469; 2010 1st sp.s. c 7 § 3; 1986 c 155 § 10; 1981 c 67 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Additional notes found at www.leg.wa.gov

34.12.140 Transfers and payments into revolving fund—Limitation on employment security department payments—Allotment by director of financial management—Disbursements from fund by voucher. The amounts to be disbursed from the administrative hearings revolving fund from time to time shall be transferred thereto by the state treasurer from funds appropriated to any and all agencies for administrative hearings expenses on a quarterly basis. Agencies operating in whole or in part from nonappropriated funds shall pay into the administrative hearings revolving fund such funds as will fully reimburse funds appropriated to the office of administrative hearings for any services provided activities financed by nonappropriated funds. The funds from the employment security department for the administrative hearings services provided by the office of administrative hearings shall not exceed that portion of the resources provided to the employment security department by the department of labor, employment and training administration, for such administrative hearings services. To satisfy department of labor funding requirements, the office of administrative hearings shall meet or exceed timeliness standards under federal regulations in the conduct of employment security department appeals.

The director of financial management shall allot all such funds to the office of administrative hearings for the operation of the office, pursuant to appropriation, in the same manner as appropriated funds are allocated to other agencies under chapter 43.88 RCW.

Disbursements from the administrative hearings revolving fund shall be pursuant to vouchers executed by the chief administrative law judge or his or her designee. [2011 c 336 § 764; 1982 c 189 § 10.]

Additional notes found at www.leg.wa.gov

Title 35

CITIES AND TOWNS

Chapters

- 35.02 Incorporation proceedings.
- 35.13 Annexation of unincorporated areas.
- 35.20 Municipal courts—Cities over four hundred thousand.
- 35.21 Miscellaneous provisions.
- 35.22 First-class cities.
- 35.23 Second-class cities.
- 35.33 Budgets in second and third-class cities, towns, and first-class cities under three hundred thousand.
- 35.34 Biennial budgets.
- 35.43 Local improvements—Authority—Initiation of proceedings.
- 35.58 Metropolitan municipal corporations.
- 35.63 Planning commissions.
- 35.79 Streets—Vacation.
- 35.92 Municipal utilities.

- 35.102** Municipal business and occupation tax.
35.104 Health sciences and services authorities.

Chapter 35.02 RCW

INCORPORATION PROCEEDINGS

Sections

- 35.02.130 Newly incorporated city or town—Effective date of incorporation—Powers during interim period—Terms of elected officers—First municipal election. (*Effective January 1, 2012.*)

35.02.130 Newly incorporated city or town—Effective date of incorporation—Powers during interim period—Terms of elected officers—First municipal election. (*Effective January 1, 2012.*) The city or town officially shall become incorporated at a date from one hundred eighty days to three hundred sixty days after the date of the election on the question of incorporation. An interim period shall exist between the time the newly elected officials have been elected and qualified and this official date of incorporation. During this interim period, the newly elected officials are authorized to adopt ordinances and resolutions which shall become effective on or after the official date of incorporation, and to enter into contracts and agreements to facilitate the transition to becoming a city or town and to ensure a continuation of governmental services after the official date of incorporation. Periods of time that would be required to elapse between the enactment and effective date of such ordinances, including but not limited to times for publication or for filing referendums, shall commence upon the date of such enactment as though the city or town were officially incorporated.

During this interim period, the city or town governing body may adopt rules establishing policies and procedures under the state environmental policy act, chapter 43.21C RCW, and may use these rules and procedures in making determinations under the state environmental policy act, chapter 43.21C RCW.

During this interim period, the newly formed city or town and its governing body shall be subject to the following as though the city or town were officially incorporated: RCW 4.24.470 relating to immunity; chapter 42.17A RCW relating to open government; chapter 42.56 RCW relating to public records; chapter 40.14 RCW relating to the preservation and disposition of public records; chapters 42.20 and 42.23 RCW relating to ethics and conflicts of interest; chapters 42.30 and 42.32 RCW relating to open public meetings and minutes; RCW 35.22.288, 35.23.221, 35.27.300, 35A.12.160, as appropriate, and chapter 35A.65 RCW relating to the publication of notices and ordinances; RCW 35.21.875 and 35A.21.230 relating to the designation of an official newspaper; RCW 36.16.138 relating to liability insurance; RCW 35.22.620, 35.23.352, and 35A.40.210, as appropriate, and statutes referenced therein relating to public contracts and bidding; and chapter 39.34 RCW relating to interlocal cooperation. Tax anticipation or revenue anticipation notes or warrants and other short-term obligations may be issued and funds may be borrowed on the security of these instruments during this interim period, as provided in chapter 39.50 RCW. Funds also may be borrowed from federal,

state, and other governmental agencies in the same manner as if the city or town were officially incorporated.

RCW 84.52.020 and 84.52.070 shall apply to the extent that they may be applicable, and the governing body of such city or town may take appropriate action by ordinance during the interim period to adopt the property tax levy for its first full calendar year following the interim period.

The governing body of the new city or town may acquire needed facilities, supplies, equipment, insurance, and staff during this interim period as if the city or town were in existence. An interim city manager or administrator, who shall have such administrative powers and duties as are delegated by the governing body, may be appointed to serve only until the official date of incorporation. After the official date of incorporation the governing body of such a new city organized under the council manager form of government may extend the appointment of such an interim manager or administrator with such limited powers as the governing body determines, for up to ninety days. This governing body may submit ballot propositions to the voters of the city or town to authorize taxes to be collected on or after the official date of incorporation, or authorize an annexation of the city or town by a fire protection district or library district to be effective immediately upon the effective date of the incorporation as a city or town.

The boundaries of a newly incorporated city or town shall be deemed to be established for purposes of RCW 84.09.030 on the date that the results of the initial election on the question of incorporation are certified or the first day of January following the date of this election if the newly incorporated city or town does not impose property taxes in the same year that the voters approve the incorporation.

The newly elected officials shall take office immediately upon their election and qualification with limited powers during this interim period as provided in this section. They shall acquire their full powers as of the official date of incorporation and shall continue in office until their successors are elected and qualified at the next general municipal election after the official date of incorporation: PROVIDED, That if the date of the next general municipal election is less than twelve months after the date of the first election of councilmembers, those initially elected councilmembers shall serve until their successors are elected and qualified at the next following general municipal election as provided in RCW 29A.20.040. For purposes of this section, the general municipal election shall be the date on which city and town general elections are held throughout the state of Washington, pursuant to RCW 29A.04.330.

In any newly incorporated city that has adopted the council-manager form of government, the term of office of the mayor, during the interim period only, shall be set by the council, and thereafter shall be as provided by law.

The official date of incorporation shall be on a date from one hundred eighty to three hundred sixty days after the date of the election on the question of incorporation, as specified in a resolution adopted by the governing body during this interim period. A copy of the resolution shall be filed with the county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located. If the governing body fails to adopt such a resolution, the official date of incorporation shall be three hundred

sixty days after the date of the election on the question of incorporation. The county legislative authority of the county in which all or the major portion of the newly incorporated city or town is located shall file a notice with the county assessor that the city or town has been authorized to be incorporated immediately after the favorable results of the election on the question of incorporation have been certified. The county legislative authority shall file a notice with the secretary of state that the city or town is incorporated as of the official date of incorporation. [2011 c 60 § 15; 2005 c 274 § 263; 1997 c 361 § 11; 1994 c 154 § 308; 1991 c 360 § 3; 1986 c 234 § 16; 1965 c 7 § 35.02.130. Prior: 1953 c 219 § 7; 1890 p 133 § 3, part; RRS § 8885, part.]

Effective date—2011 c 60: See RCW 42.17A.919.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Times for holding elections: RCW 29A.04.311 through 29A.04.330.

Additional notes found at www.leg.wa.gov

Chapter 35.13 RCW

ANNEXATION OF UNINCORPORATED AREAS

Sections

35.13.260 Determining population of annexed territory—Certificate—As basis for allocation of state funds—Revised certificate.

35.13.260 Determining population of annexed territory—Certificate—As basis for allocation of state funds—Revised certificate. (1) Whenever any territory is annexed to a city or town, a certificate as hereinafter provided shall be submitted in triplicate to the office of financial management, hereinafter in this section referred to as "the office", within thirty days of the effective date of annexation specified in the relevant ordinance. After approval of the certificate, the office shall retain the original copy in its files, and transmit the second copy to the department of transportation and return the third copy to the city or town. Such certificates shall be in such form and contain such information as shall be prescribed by the office. A copy of the complete ordinance containing a legal description and a map showing specifically the boundaries of the annexed territory shall be attached to each of the three copies of the certificate. The certificate shall be signed by the mayor and attested by the city clerk. Upon request, the office shall furnish certification forms to any city or town.

(2)(a) The resident population of the annexed territory shall be determined by, or under the direction of, the mayor of the city or town.

(b) If the annexing city or town has a population of ten thousand or less, the annexed territory consists entirely of one or more partial federal census blocks, or 2010 federal decennial census data has not been released within twelve months immediately prior to the date of annexation, the population determination shall consist of an actual enumeration of the population.

(c) In any circumstance, the city or town may choose to have the population determination of the entire annexed territory consist of an actual enumeration. However, if the city or town does not use actual enumeration for determining population, the annexed territory includes or consists of one or

more complete federal census blocks, and 2010 federal decennial census data has been released within twelve months immediately prior to the date of annexation, the population determination shall consist of:

(i) Relevant 2010 federal decennial census data pertaining to the complete block or blocks, as such data has been updated by the most recent official population estimate released by the office pursuant to RCW 43.62.030;

(ii) An actual enumeration of any population located within the annexed territory but outside the complete federal census block or blocks; and

(iii) If the office, at least two weeks prior to the date of annexation, confirms the existence of a known census error within a complete federal census block and identifies a structure or complex listed in (c)(iii)(A) through (E) of this subsection (2) as a likely source of the error, an actual enumeration of one or more of the block's identified:

(A) Group quarters;

(B) Mobile home parks;

(C) Apartment buildings that are composed of at least fifty units and are certified for occupancy between January 1, 2010, and April 1, 2011;

(D) Missing subdivisions; and

(E) Closures of any of the categories in (c)(iii)(A) through (D) of this subsection.

(d) Whenever an actual enumeration is used, it shall be made in accordance with the practices and policies of, and subject to the approval of, the office.

(e) The city or town shall be responsible for the full cost of the population determination.

(3) The population shall be determined as of the effective date of annexation as specified in the relevant ordinance.

Until an annexation certificate is filed and approved as provided herein, such annexed territory shall not be considered by the office in determining the population of such city or town.

Upon approval of the annexation certificate, the office shall forward to each state official or department responsible for making allocations or payments to cities or towns, a revised certificate reflecting the increase in population due to such annexation. Upon and after the date of the commencement of the next quarterly period, the population determination indicated in such revised certificate shall be used as the basis for the allocation and payment of state funds to such city or town.

For the purposes of this section, each quarterly period shall commence on the first day of the months of January, April, July, and October. Whenever a revised certificate is forwarded by the office thirty days or less prior to the commencement of the next quarterly period, the population of the annexed territory shall not be considered until the commencement of the following quarterly period. [2011 c 342 § 1; 1979 c 151 § 25; 1975 1st ex.s. c 31 § 1; 1969 ex.s. c 50 § 1; 1967 ex.s. c 42 § 2; 1965 c 7 § 35.13.260. Prior: 1961 c 51 § 1; 1957 c 175 § 14; prior: 1951 c 248 § 5, part.]

Effective date—2011 c 342: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2011]." [2011 c 342 § 3.]

Allocations to cities and towns from motor vehicle fund: RCW 46.68.110.

Census to be conducted in decennial periods: State Constitution Art. 2 § 3.

Population determinations, office of financial management: Chapter 43.62 RCW.

Additional notes found at www.leg.wa.gov

Chapter 35.20 RCW
MUNICIPAL COURTS—
CITIES OVER FOUR HUNDRED THOUSAND

Sections

35.20.030 Jurisdiction—Maximum penalties for criminal violations—
Review—Costs.

35.20.030 Jurisdiction—Maximum penalties for criminal violations—Review—Costs. The municipal court shall have jurisdiction to try violations of all city ordinances and all other actions brought to enforce or recover license penalties or forfeitures declared or given by any such ordinances. It is empowered to forfeit cash bail or bail bonds and issue execution thereon, to hear and determine all causes, civil or criminal, arising under such ordinances, and to pronounce judgment in accordance therewith: PROVIDED, That for a violation of the criminal provisions of an ordinance no greater punishment shall be imposed than a fine of five thousand dollars or imprisonment in the city jail for up to three hundred sixty-four days, or both such fine and imprisonment, but the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. All civil and criminal proceedings in municipal court, and judgments rendered therein, shall be subject to review in the superior court by writ of review or on appeal: PROVIDED, That an appeal from the court's determination or order in a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5). Costs in civil and criminal cases may be taxed as provided in district courts. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program. [2011 c 96 § 24; 2005 c 282 § 41; 2000 c 111 § 7; 1993 c 83 § 3; 1984 c 258 § 801; 1979 ex.s. c 136 § 23; 1965 c 7 § 35.20.030. Prior: 1955 c 290 § 3.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Additional notes found at www.leg.wa.gov

Chapter 35.21 RCW
MISCELLANEOUS PROVISIONS

Sections

35.21.217 Utility services—Deposit—Tenants' delinquencies—
Notice—Lien.
35.21.392 Contractors—Authority of city to verify registration and report
violations.
35.21.759 Public corporations, commissions, and authorities—Applica-
bility of general laws. (*Effective January 1, 2012.*)
35.21.766 Ambulance services—Establishment authorized.

35.21.217 Utility services—Deposit—Tenants' delinquencies—Notice—Lien. (1) Prior to furnishing utility services, a city or town may require a deposit to guarantee payment for services. However, failure to require a deposit does

not affect the validity of any lien authorized by RCW 35.21.290 or 35.67.200. A city or town may determine how to apply partial payments on past due accounts.

(2) A city or town may provide a real property owner or the owner's designee with duplicates of tenant utility service bills, or may notify an owner or the owner's designee that a tenant's utility account is delinquent. However, if an owner or the owner's designee notifies the city or town in writing that a property served by the city or town is a residential rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the city or town shall notify the owner or the owner's designee of a residential tenant's delinquency at the same time and in the same manner the city or town notifies the tenant of the tenant's delinquency or by mail, and the city or town is prohibited from collecting from the owner or the owner's designee any charges for electric light or power services more than four months past due. When a city or town provides a real property owner or the owner's designee with duplicates of residential tenant utility service bills or notice that a tenant's utility account is delinquent, the city or town shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee.

(3) After August 1, 2010, if a city or town fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by subsection (2) of this section, the city or town shall have no lien against the premises for the residential tenant's delinquent and unpaid charges and is prohibited from collecting the tenant's delinquent and unpaid charges for electric light or power services from the owner or the owner's designee.

(4) When a utility account is in a tenant's name, the owner or the owner's designee shall notify the city or town in writing within fourteen days of the termination of the rental agreement and vacation of the premises. If the owner or the owner's designee fails to provide this notice, a city or town providing electric light or power services is not limited to collecting only up to four months of a tenant's delinquent charges from the owner or the owner's designee, provided that the city or town has complied with the notification requirements of subsection (2) of this section.

(5)(a) If an occupied multiple residential rental unit receives utility service through a single utility account, if the utility account's billing address is not the same as the service address of a residential rental property, or if the city or town has been notified that a tenant resides at the service address, the city or town shall make a good faith and reasonable effort to provide written notice to the service address of pending disconnection of electric power and light or water service for nonpayment at least seven calendar days prior to disconnection. The purpose of this notice is to provide any affected tenant an opportunity to resolve the delinquency with his or her landlord or to arrange for continued service. If requested, a city or town shall provide electric power and light or water services to an affected tenant on the same terms and conditions as other residential utility customers, without requiring that he or she pay delinquent amounts for services billed directly to the property owner or a previous tenant except as otherwise allowed by law and only where the city or town offers the opportunity for the affected tenant to set up a rea-

sonable payment plan for the delinquent amounts legally due. If a landlord fails to pay for electric power and light or water services, any tenant who requests that the services be placed in his or her name may deduct from the rent due all reasonable charges paid by the tenant to the city or town for such services. A landlord may not take or threaten to take reprisals or retaliatory action as defined in RCW 59.18.240 against a tenant who deducts from his or her rent payments made to a city or town as provided in this subsection.

(b) Nothing in this subsection (5) affects the validity of any lien authorized by RCW 35.21.290 or 35.67.200. Furthermore, a city or town that provides electric power and light or water services to a residential tenant in these circumstances shall retain the right to collect from the property owner, previous tenant, or both, any delinquent amounts due for service previously provided to the service address if the city or town has complied with the notification requirements of subsection (2) of this section when applicable. [2011 c 151 § 5; 2010 c 135 § 1; 1998 c 285 § 1.]

35.21.392 Contractors—Authority of city to verify registration and report violations. A city that issues a business license to a person required to be registered under chapter 18.27 RCW may verify that the person is registered under chapter 18.27 RCW and report violations to the department of labor and industries. The department of revenue must conduct the verification for cities that participate in the master license system. [2011 c 298 § 22; 2009 c 432 § 2.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Report—2009 c 432: See note following RCW 18.27.062.

35.21.759 Public corporations, commissions, and authorities—Applicability of general laws. (Effective January 1, 2012.) A public corporation, commission, or authority created under this chapter, and officers and multi-member governing body thereof, are subject to general laws regulating local governments, multimember governing bodies, and local governmental officials, including, but not limited to, the requirement to be audited by the state auditor and various accounting requirements provided under chapter 43.09 RCW, the open public record requirements of chapter 42.56 RCW, the prohibition on using its facilities for campaign purposes under RCW 42.17A.555, the open public meetings law of chapter 42.30 RCW, the code of ethics for municipal officers under chapter 42.23 RCW, and the local government whistleblower law under chapter 42.41 RCW. [2011 c 60 § 16; 2005 c 274 § 265; 1999 c 246 § 1.]

Effective date—2011 c 60: See RCW 42.17A.919.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

35.21.766 Ambulance services—Establishment authorized. (1) Whenever a regional fire protection service authority determines that the fire protection jurisdictions that are members of the authority are not adequately served by existing private ambulance service, the governing board of the authority may by resolution provide for the establishment of a system of ambulance service to be operated by the

authority as a public utility or operated by contract after a call for bids.

(2) The legislative authority of any city or town may establish an ambulance service to be operated as a public utility. However, the legislative authority of the city or town shall not provide for the establishment of an ambulance service utility that would compete with any existing private ambulance service, unless the legislative authority of the city or town determines that the city or town, or a substantial portion of the city or town, is not adequately served by an existing private ambulance service. In determining the adequacy of an existing private ambulance service, the legislative authority of the city or town shall take into consideration objective generally accepted medical standards and reasonable levels of service which shall be published by the city or town legislative authority. The decision of the city council or legislative body shall be a discretionary, legislative act. When it is preliminarily concluded that the private ambulance service is inadequate, before issuing a call for bids or before the city or town establishes an ambulance service utility, the legislative authority of the city or town shall allow a minimum of sixty days for the private ambulance service to meet the generally accepted medical standards and reasonable levels of service. In the event of a second preliminary conclusion of inadequacy within a twenty-four month period, the legislative authority of the city or town may immediately issue a call for bids or establish an ambulance service utility and is not required to afford the private ambulance service another sixty-day period to meet the generally accepted medical standards and reasonable levels of service. Nothing in chapter 482, Laws of 2005 is intended to supersede requirements and standards adopted by the department of health. A private ambulance service which is not licensed by the department of health or whose license is denied, suspended, or revoked shall not be entitled to a sixty-day period within which to demonstrate adequacy and the legislative authority may immediately issue a call for bids or establish an ambulance service utility.

(3) The city or town legislative authority is authorized to set and collect rates and charges in an amount sufficient to regulate, operate, and maintain an ambulance utility. Prior to setting such rates and charges, the legislative authority must determine, through a cost-of-service study, the total cost necessary to regulate, operate, and maintain the ambulance utility. Total costs shall not include capital cost for the construction, major renovation, or major repair of the physical plant. Once the legislative authority determines the total costs, the legislative authority shall then identify that portion of the total costs that are attributable to the availability of the ambulance service and that portion of the total costs that are attributable to the demand placed on the ambulance utility.

(a) Availability costs are those costs attributable to the basic infrastructure needed to respond to a single call for service within the utility's response criteria. Availability costs may include costs for dispatch, labor, training of personnel, equipment, patient care supplies, and maintenance of equipment.

(b) Demand costs are those costs that are attributable to the burden placed on the ambulance service by individual calls for ambulance service. Demand costs shall include costs related to frequency of calls, distances from hospitals,

and other factors identified in the cost-of-service study conducted to assess burdens imposed on the ambulance utility.

(4) A city or town legislative authority is authorized to set and collect rates and charges as follows:

(a) The rate attributable to costs for availability described under subsection (3)(a) of this section shall be uniformly applied across user classifications within the utility;

(b) The rate attributable to costs for demand described under subsection (3)(b) of this section shall be established and billed to each utility user classification based on each user classification's burden on the utility;

(c) The fee charged by the utility shall reflect a combination of the availability cost and the demand cost;

(d)(i) Except as provided in (d)(ii) of this subsection, the combined rates charged shall reflect an exemption for persons who are medicaid eligible and who reside in a nursing facility, boarding home, adult family home, or receive in-home services. The combined rates charged may reflect an exemption or reduction for designated classes consistent with Article VIII, section 7 of the state Constitution. The amounts of exemption or reduction shall be a general expense of the utility, and designated as an availability cost, to be spread uniformly across the utility user classifications.

(ii) For cities with a population less than two thousand five hundred that established an ambulance utility before May 6, 2004, the combined rates charged may reflect an exemption or reduction for persons who are medicaid eligible, and for designated classes consistent with Article VIII, section 7 of the state Constitution;

(e)(i) Except as provided in (e)(ii) of this subsection (4), the legislative authority must continue to allocate at least seventy percent of the total amount of general fund revenues expended, as of May 5, 2004, toward the total costs necessary to regulate, operate, and maintain the ambulance service utility. However, cities or towns that operated an ambulance service before May 6, 2004, and commingled general fund dollars and ambulance service dollars, may reasonably estimate that portion of general fund dollars that were, as of May 5, 2004, applied toward the operation of the ambulance service, and at least seventy percent of such estimated amount must then continue to be applied toward the total cost necessary to regulate, operate, and maintain the ambulance utility. Cities and towns which first established an ambulance service utility after May 6, 2004, must allocate, from the general fund or emergency medical service levy funds, or a combination of both, at least an amount equal to seventy percent of the total costs necessary to regulate, operate, and maintain the ambulance service utility as of May 5, 2004, or the date that the utility is established.

(ii) After January 1, 2012, the legislative authority may allocate general fund revenues toward the total costs necessary to regulate, operate, and maintain the ambulance service utility in an amount less than required by (e)(i) of this subsection (4). However, before making any reduction to the general fund allocation, the legislative authority must hold a public hearing, preceded by at least thirty days' notice provided in each ratepayer's utility bill, at which the legislative authority must allow for public comment and present:

(A) The utility's most recent cost of service study;

(B) A summary of the utility's current revenue sources;

(C) A proposed budget reflecting the reduced allocation of general fund revenues;

(D) Any proposed change to utility rates; and

(E) Any anticipated impact to the utility's level of service;

(f) The legislative authority must allocate available emergency medical service levy funds, in an amount proportionate to the percentage of the ambulance service costs to the total combined operating costs for emergency medical services and ambulance services, towards the total costs necessary to regulate, operate, and maintain the ambulance utility;

(g) The legislative authority must allocate all revenues received through direct billing to the individual user of the ambulance service to the demand-related costs under subsection (3)(b) of this section;

(h) The total revenue generated by the rates and charges shall not exceed the total costs necessary to regulate, operate, and maintain an ambulance utility; and

(i) Revenues generated by the rates and charges must be deposited in a separate fund or funds and be used only for the purpose of paying for the cost of regulating, maintaining, and operating the ambulance utility.

(5) Ambulance service rates charged pursuant to this section do not constitute taxes or charges under RCW 82.02.050 through 82.02.090, or 35.21.768, or charges otherwise prohibited by law. [2011 c 139 § 1; 2005 c 482 § 2; 2004 c 129 § 34; 1975 1st ex.s. c 24 § 1.]

Finding—Intent—2005 c 482: "The legislature finds that ambulance and emergency medical services are essential services and the availability of these services is vital to preserving and promoting the health, safety, and welfare of people in local communities throughout the state. All persons, businesses, and industries benefit from the availability of ambulance and emergency medical services, and survival rates can be increased when these services are available, adequately funded, and appropriately regulated. It is the legislature's intent to explicitly recognize local jurisdictions' ability and authority to collect utility service charges to fund ambulance and emergency medical service systems that are based, at least in some part, upon a charge for the availability of these services." [2005 c 482 § 1.]

Captions not law—Severability—2004 c 129: See RCW 52.26.900 and 52.26.901.

Ambulance services by counties authorized: RCW 36.01.100.

Chapter 35.22 RCW FIRST-CLASS CITIES

Sections

35.22.280 Specific powers enumerated.

35.22.280 Specific powers enumerated. Any city of the first class shall have power:

(1) To provide for general and special elections, for questions to be voted upon, and for the election of officers;

(2) To provide for levying and collecting taxes on real and personal property for its corporate uses and purposes, and to provide for the payment of the debts and expenses of the corporation;

(3) To control the finances and property of the corporation, and to acquire, by purchase or otherwise, such lands and other property as may be necessary for any part of the corporate uses provided for by its charter, and to dispose of any such property as the interests of the corporation may, from time to time, require;

(4) To borrow money for corporate purposes on the credit of the corporation, and to issue negotiable bonds therefor, on such conditions and in such manner as shall be prescribed in its charter; but no city shall, in any manner or for any purpose, become indebted to an amount in the aggregate to exceed the limitation of indebtedness prescribed by chapter 39.36 RCW as now or hereafter amended;

(5) To issue bonds in place of or to supply means to meet maturing bonds or other indebtedness, or for the consolidation or funding of the same;

(6) To purchase or appropriate private property within or without its corporate limits, for its corporate uses, upon making just compensation to the owners thereof, and to institute and maintain such proceedings as may be authorized by the general laws of the state for the appropriation of private property for public use;

(7) To lay out, establish, open, alter, widen, extend, grade, pave, plank, establish grades, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks, and other public grounds, and to regulate and control the use thereof, and to vacate the same, and to authorize or prohibit the use of electricity at, in, or upon any of said streets, or for other purposes, and to prescribe the terms and conditions upon which the same may be so used, and to regulate the use thereof;

(8) To change the grade of any street, highway, or alley within its corporate limits, and to provide for the payment of damages to any abutting owner or owners who shall have built or made other improvements upon such street, highway, or alley at any point opposite to the point where such change shall be made with reference to the grade of such street, highway, or alley as the same existed prior to such change;

(9) To authorize or prohibit the locating and constructing of any railroad or street railroad in any street, alley, or public place in such city, and to prescribe the terms and conditions upon which any such railroad or street railroad shall be located or constructed; to provide for the alteration, change of grade, or removal thereof; to regulate the moving and operation of railroad and street railroad trains, cars, and locomotives within the corporate limits of said city; and to provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads;

(10) To provide for making local improvements, and to levy and collect special assessments on property benefited thereby, and for paying for the same or any portion thereof;

(11) To acquire, by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same. When the language of any instrument by which any property is so acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, and where it is found that the property so acquired is not needed for park purposes and that an exchange thereof for other property to be dedicated for park purposes is in the public interest, the city may, with the consent of the grantor or such other person, his or her heirs, successors, or assigns, exchange such property for other property to be dedicated for park purposes, and may make, execute, and deliver proper conveyances to effect the exchange. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to

locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public arising out of any prior dedication for park purposes, but the right of the public shall be transferred and preserved with like force and effect to the property received by the city in such exchange;

(12) To construct and keep in repair bridges, viaducts, and tunnels, and to regulate the use thereof;

(13) To determine what work shall be done or improvements made at the expense, in whole or in part, of the owners of the adjoining contiguous, or proximate property, or others specially benefited thereby; and to provide for the manner of making and collecting assessments therefor;

(14) To provide for erecting, purchasing, or otherwise acquiring waterworks, within or without the corporate limits of said city, to supply said city and its inhabitants with water, or authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied;

(15) To provide for lighting the streets and all public places, and for furnishing the inhabitants thereof with gas or other lights, and to erect, or otherwise acquire, and to maintain the same, or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and to regulate and control the use thereof;

(16) To establish and regulate markets, and to provide for the weighing, measuring, and inspection of all articles of food and drink offered for sale thereat, or at any other place within its limits, by proper penalties, and to enforce the keeping of proper legal weights and measures by all vendors in such city, and to provide for the inspection thereof. Whenever the words "public markets" are used in this chapter, and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public. Property located in such a district or area need not be exclusively or primarily used for such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderate-income housing;

(17) To erect and establish hospitals and pesthouses, and to control and regulate the same;

(18) To provide for establishing and maintaining reform schools for juvenile offenders;

(19) To provide for the establishment and maintenance of public libraries, and to appropriate, annually, such percent of all moneys collected for fines, penalties, and licenses as shall be prescribed by its charter, for the support of a city library, which shall, under such regulations as shall be prescribed by ordinance, be open for use by the public;

(20) To regulate the burial of the dead, and to establish and regulate cemeteries within or without the corporate limits, and to acquire land therefor by purchase or otherwise; to cause cemeteries to be removed beyond the limits of the cor-

poration, and to prohibit their establishment within two miles of the boundaries thereof;

(21) To direct the location and construction of all buildings in which any trade or occupation offensive to the senses or deleterious to public health or safety shall be carried on, and to regulate the management thereof; and to prohibit the erection or maintenance of such buildings or structures, or the carrying on of such trade or occupation within the limits of such corporation, or within the distance of two miles beyond the boundaries thereof;

(22) To provide for the prevention and extinguishment of fires and to regulate or prohibit the transportation, keeping, or storage of all combustible or explosive materials within its corporate limits, and to regulate and restrain the use of fireworks;

(23) To establish fire limits and to make all such regulations for the erection and maintenance of buildings or other structures within its corporate limits as the safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in safe condition;

(24) To regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained;

(25) To deepen, widen, dock, cover, wall, alter, or change the channels of waterways and courses, and to provide for the construction and maintenance of all such works as may be required for the accommodation of commerce, including canals, slips, public landing places, wharves, docks, and levees, and to control and regulate the use thereof;

(26) To control, regulate, or prohibit the anchorage, moorage, and landing of all watercrafts and their cargoes within the jurisdiction of the corporation;

(27) To fix the rates of wharfage and dockage, and to provide for the collection thereof, and to provide for the imposition and collection of such harbor fees as may be consistent with the laws of the United States;

(28) To license, regulate, control, or restrain wharf boats, tugs, and other boats used about the harbor or within such jurisdiction;

(29) To require the owners of public halls or other buildings to provide suitable means of exit; to provide for the prevention and abatement of nuisances, for the cleaning and purification of watercourses and canals, for the drainage and filling up of ponds on private property within its limits, when the same shall be offensive to the senses or dangerous to health; to regulate and control, and to prevent and punish, the defilement or pollution of all streams running through or into its corporate limits, and for the distance of five miles beyond its corporate limits, and on any stream or lake from which the water supply of said city is taken, for a distance of five miles beyond its source of supply; to provide for the cleaning of areas, vaults, and other places within its corporate limits which may be so kept as to become offensive to the senses or dangerous to health, and to make all such quarantine or other regulations as may be necessary for the preservation of the public health, and to remove all persons afflicted with any infectious or contagious disease to some suitable place to be provided for that purpose;

(30) To declare what shall be a nuisance, and to abate the same, and to impose fines upon parties who may create, continue, or suffer nuisances to exist;

(31) To regulate the selling or giving away of intoxicating, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state: PROVIDED, That no license shall be granted to any person or persons who shall not first comply with the general laws of the state in force at the time the same is granted;

(32) To grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same. However, no license shall be granted to continue for longer than one year from the date thereof. A city may not require a business to be licensed based solely upon registration under or compliance with the streamlined sales and use tax agreement;

(33) To regulate the carrying on within its corporate limits of all occupations which are of such a nature as to affect the public health or the good order of said city, or to disturb the public peace, and which are not prohibited by law, and to provide for the punishment of all persons violating such regulations, and of all persons who knowingly permit the same to be violated in any building or upon any premises owned or controlled by them;

(34) To restrain and provide for the punishment of vagrants, mendicants, prostitutes, and other disorderly persons;

(35) To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating any of the ordinances of said city. The punishment shall not exceed a fine of five thousand dollars or imprisonment in the city jail for three hundred sixty-four days, or both such fine and imprisonment. The punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such cities alternatively may provide that violations of ordinances constitute a civil violation subject to monetary penalties, but no act which is a state crime may be made a civil violation;

(36) To project or extend its streets over and across any tidelands within its corporate limits, and along or across the harbor areas of such city, in such manner as will best promote the interests of commerce;

(37) To provide in their respective charters for a method to propose and adopt amendments thereto. [2011 c 96 § 25; 2009 c 549 § 2046; 2008 c 129 § 1; 1993 c 83 § 4; 1990 c 189 § 3; 1986 c 278 § 3; 1984 c 258 § 802; 1977 ex.s. c 316 § 20; 1971 ex.s. c 16 § 1; 1965 ex.s. c 116 § 2; 1965 c 7 § 35.22.280. Prior: 1890 p 218 § 5; RRS § 8966.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Additional notes found at www.leg.wa.gov

Chapter 35.23 RCW SECOND-CLASS CITIES

Sections

35.23.440 Specific powers enumerated.

35.23.440 Specific powers enumerated. The city council of each second-class city shall have power and authority:

(1) Ordinances: To make and pass all ordinances, orders, and resolutions not repugnant to the Constitution of the United States or the state of Washington, or the provisions of this title, necessary for the municipal government and management of the affairs of the city, for the execution of the powers vested in said body corporate, and for the carrying into effect of the provisions of this title.

(2) License of shows: To fix and collect a license tax, for the purposes of revenue and regulation, on theatres, melodeons, balls, concerts, dances, theatrical, circus, or other performances, and all performances where an admission fee is charged, or which may be held in any house or place where wines or liquors are sold to the participators; also all shows, billiard tables, pool tables, bowling alleys, exhibitions, or amusements.

(3) Hotels, etc., licenses: To fix and collect a license tax for the purposes of revenue and regulation on and to regulate all taverns, hotels, restaurants, banks, brokers, manufactories, livery stables, express companies and persons engaged in transmitting letters or packages, railroad, stage, and steamboat companies or owners, whose principal place of business is in such city, or who have an agency therein.

(4) Peddlers', etc., licenses: To license, for the purposes of revenue and regulation, tax, prohibit, suppress, and regulate all raffles, hawkers, peddlers, pawnbrokers, refreshment or coffee stands, booths, or sheds; and to regulate as authorized by state law all tipling houses, dram shops, saloons, bars, and barrooms.

(5) Dance houses: To prohibit or suppress, or to license and regulate all dance houses, fandango houses, or any exhibition or show of any animal or animals.

(6) License vehicles: To license for the purposes of revenue and regulation, and to tax hackney coaches, cabs, omnibuses, drays, market wagons, and all other vehicles used for hire, and to regulate their stands, and to fix the rates to be charged for the transportation of persons, baggage, and property.

(7) Hotel runners: To license or suppress runners for steamboats, taverns, or hotels.

(8) License generally: To fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law not heretofore specified. However, on any business, trade, or calling not provided by law to be licensed for state and county purposes, the amount of license shall be fixed at the discretion of the city council, as they may deem the interests and good order of the city may require. A city may not require a business to be licensed based solely upon registration under or compliance with the streamlined sales and use tax agreement.

(9) Riots: To prevent and restrain any riot or riotous assemblages, disturbance of the peace, or disorderly conduct in any place, house, or street in the city.

(10) Nuisances: To declare what shall be deemed nuisances; to prevent, remove, and abate nuisances at the expense of the parties creating, causing, or committing or maintaining the same, and to levy a special assessment on the land or premises whereon the nuisance is situated to defray

the cost or to reimburse the city for the cost of abating the same.

(11) Stock pound: To establish, maintain, and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed and collected of the owners of any animals impounded, and from no other source; to prevent and regulate the running at large of any and all domestic animals within the city limits or any parts thereof, and to regulate or prevent the keeping of such animals within any part of the city.

(12) Control of certain trades: To control and regulate slaughterhouses, washhouses, laundries, tanneries, forges, and offensive trades, and to provide for their exclusion or removal from the city limits, or from any part thereof.

(13) Street cleaning: To provide, by regulation, for the prevention and summary removal of all filth and garbage in streets, sloughs, alleys, back yards, or public grounds of such city, or elsewhere therein.

(14) Gambling, etc.: To prohibit and suppress all gambling and all gambling or disorderly houses, and houses of ill fame, and all immoral and indecent amusements, exhibitions, and shows.

(15) Markets: To establish and regulate markets and market places.

(16) Speed of railroad cars: To fix and regulate the speed at which any railroad cars, streetcars, automobiles, or other vehicles may run within the city limits, or any portion thereof.

(17) City commons: To provide for and regulate the commons of the city.

(18) Fast driving: To regulate or prohibit fast driving or riding in any portion of the city.

(19) Combustibles: To regulate or prohibit the loading or storage of gunpowder and combustible or explosive materials in the city, or transporting the same through its streets or over its waters.

(20) Property: To have, purchase, hold, use, and enjoy property of every name or kind whatsoever, and to sell, lease, transfer, mortgage, convey, control, or improve the same; to build, erect, or construct houses, buildings, or structures of any kind needful for the use or purposes of such city.

(21) Fire department: To establish, continue, regulate, and maintain a fire department for such city, to change or reorganize the same, and to disband any company or companies of the said department; also, to discontinue and disband said fire department, and to create, organize, establish, and maintain a paid fire department for such city.

(22) Water supply: To adopt, enter into, and carry out means for securing a supply of water for the use of such city or its inhabitants, or for irrigation purposes therein.

(23) Overflow of water: To prevent the overflow of the city or to secure its drainage, and to assess the cost thereof to the property benefited.

(24) House numbers: To provide for the numbering of houses.

(25) Health board: To establish a board of health; to prevent the introduction and spread of disease; to establish a city infirmary and to provide for the indigent sick; and to provide and enforce regulations for the protection of health, cleanliness, peace, and good order of the city; to establish and maintain hospitals within or without the city limits; to control and

regulate interments and to prohibit them within the city limits.

(26) Harbors and wharves: To build, alter, improve, keep in repair, and control the waterfront; to erect, regulate, and repair wharves, and to fix the rate of wharfage and transit of wharf, and levy dues upon vessels and commodities; and to provide for the regulation of berths, landing, stationing, and removing steamboats, sail vessels, rafts, barges, and all other watercraft; to fix the rate of speed at which steamboats and other steam watercraft may run along the waterfront of the city; to build bridges so as not to interfere with navigation; to provide for the removal of obstructions to the navigation of any channel or watercourses or channels.

(27) License of steamers: To license steamers, boats, and vessels used in any watercourse in the city, and to fix and collect a license tax thereon.

(28) Ferry licenses: To license ferries and toll bridges under the law regulating the granting of such license.

(29) Penalty for violation of ordinances: To provide that violations of ordinances with the punishment for any offense not exceeding a fine of five thousand dollars or imprisonment for up to three hundred sixty-four days, or both fine and imprisonment, but the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Alternatively, such a city may provide that a violation of an ordinance constitutes a civil violation subject to monetary penalties or to determine and impose fines for forfeitures and penalties, but no act which is a state crime may be made a civil violation. A violation of an order, regulation, or ordinance relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of an order, regulation, or ordinance equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

(30) Police department: To create and establish a city police; to prescribe their duties and their compensation; and to provide for the regulation and government of the same.

(31) Examine official accounts: To examine, either in open session or by committee, the accounts or doings of all officers or other persons having the care, management, or disposition of moneys, property, or business of the city.

(32) Contracts: To make all appropriations, contracts, or agreements for the use or benefit of the city and in the city's name.

(33) Streets and sidewalks: To provide by ordinance for the opening, laying out, altering, extending, repairing, grading, paving, planking, graveling, macadamizing, or otherwise improving of public streets, avenues, and other public ways, or any portion of any thereof; and for the construction, regulation, and repair of sidewalks and other street improvements, all at the expense of the property to be benefited thereby, without any recourse, in any event, upon the city for any portion of the expense of such work, or any delinquency of the property holders or owners, and to provide for the forced sale thereof for such purposes; to establish a uniform grade for streets, avenues, sidewalks, and squares, and to enforce the observance thereof.

(34) Waterways: To clear, cleanse, alter, straighten, widen, fill up, or close any waterway, drain, or sewer, or any watercourse in such city when not declared by law to be nav-

igable, and to assess the expense thereof, in whole or in part, to the property specially benefited.

(35) Sewerage: To adopt, provide for, establish, and maintain a general system of sewerage, draining, or both, and the regulation thereof; to provide funds by local assessments on the property benefited for the purpose aforesaid and to determine the manner, terms, and place of connection with main or central lines of pipes, sewers, or drains established, and compel compliance with and conformity to such general system of sewerage or drainage, or both, and the regulations of said council thereto relating, by the infliction of suitable penalties and forfeitures against persons and property, or either, for nonconformity to, or failure to comply with the provisions of such system and regulations or either.

(36) Buildings and parks: To provide for all public buildings, public parks, or squares, necessary or proper for the use of the city.

(37) Franchises: To permit the use of the streets for railroad or other public service purposes.

(38) Payment of judgments: To order paid any final judgment against such city, but none of its lands or property of any kind or nature, taxes, revenue, franchise, or rights, or interest, shall be attached, levied upon, or sold in or under any process whatsoever.

(39) Weighing of fuel: To regulate the sale of coal and wood in such city, and may appoint a measurer of wood and weigher of coal for the city, and define his or her duties, and may prescribe his or her term of office, and the fees he or she shall receive for his or her services: PROVIDED, That such fees shall in all cases be paid by the parties requiring such service.

(40) Hospitals, etc.: To erect and establish hospitals and pesthouses and to control and regulate the same.

(41) Waterworks: To provide for the erection, purchase, or otherwise acquiring of waterworks within or without the corporate limits of the city to supply such city and its inhabitants with water, and to regulate and control the use and price of the water so supplied.

(42) City lights: To provide for lighting the streets and all public places of the city and for furnishing the inhabitants of the city with gas, electric, or other light, and for the ownership, purchase or acquisition, construction, or maintenance of such works as may be necessary or convenient therefor: PROVIDED, That no purchase of any such water plant or light plant shall be made without first submitting the question of such purchase to the electors of the city.

(43) Parks: To acquire by purchase or otherwise land for public parks, within or without the limits of the city, and to improve the same.

(44) Bridges: To construct and keep in repair bridges, and to regulate the use thereof.

(45) Power of eminent domain: In the name of and for the use and benefit of the city, to exercise the right of eminent domain, and to condemn lands and property for the purposes of streets, alleys, parks, public grounds, waterworks, or for any other municipal purpose and to acquire by purchase or otherwise such lands and property as may be deemed necessary for any of the corporate uses provided for by this title, as the interests of the city may from time to time require.

(46) To provide for the assessment of taxes: To provide for the assessment, levying, and collecting of taxes on real

and personal property for the corporate uses and purposes of the city and to provide for the payment of the debts and expenses of the corporation.

(47) Local improvements: To provide for making local improvements, and to levy and collect special assessments on the property benefited thereby and for paying the same or any portion thereof; to determine what work shall be done or improvements made, at the expense, in whole or in part, of the adjoining, contiguous, or proximate property, and to provide for the manner of making and collecting assessments therefor.

(48) Cemeteries: To regulate the burial of the dead and to establish and regulate cemeteries, within or without the corporate limits, and to acquire lands therefor by purchase or otherwise.

(49) Fire limits: To establish fire limits with proper regulations and to make all needful regulations for the erection and maintenance of buildings or other structures within the corporate limits as safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in a safe condition; to regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained.

(50) Safety and sanitary measures: To require the owners of public halls, theaters, hotels, and other buildings to provide suitable means of exit and proper fire escapes; to provide for the cleaning and purification of watercourses and canals and for the draining and filling up of ponds on private property within its limits when the same shall be offensive to the senses or dangerous to the health, and to charge the expense thereof to the property specially benefited, and to regulate and control and provide for the prevention and punishment of the defilement or pollution of all streams running in or through its corporate limits and a distance of five miles beyond its corporate limits, and of any stream or lake from which the water supply of the city is or may be taken and for a distance of five miles beyond its source of supply, and to make all quarantine and other regulations as may be necessary for the preservation of the public health and to remove all persons afflicted with any contagious disease to some suitable place to be provided for that purpose.

(51) To regulate liquor traffic: To regulate the selling or giving away of intoxicating, spirituous, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state.

(52) To establish streets on tidelands: To project or extend or establish streets over and across any tidelands within the limits of such city.

(53) To provide for the general welfare. [2011 c 96 § 26; 2009 c 549 § 2053; 2008 c 129 § 2; 1994 c 81 § 19; 1993 c 83 § 5; 1986 c 278 § 4. Prior: 1984 c 258 § 803; 1984 c 189 § 5; 1979 ex.s. c 136 § 28; 1977 ex.s. c 316 § 21; 1965 ex.s. c 116 § 7; 1965 c 7 § 35.23.440; prior: 1907 c 241 § 29; 1890 p 148 § 38; RRS § 9034.]

Findings—Intent—2011 c 96: See note following RCW 9A.20.021.

Additional notes found at www.leg.wa.gov

Chapter 35.33 RCW

BUDGETS IN SECOND AND THIRD-CLASS CITIES, TOWNS, AND FIRST-CLASS CITIES UNDER THREE HUNDRED THOUSAND

Sections

35.33.131 Funds received from sale of bonds and warrants—Expenditure program—Federal tax law.

35.33.131 Funds received from sale of bonds and warrants—Expenditure program—Federal tax law. Moneys received from the sale of bonds or warrants must be used for no other purpose than that for which they were issued. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued it must be used for the payment of principal of or interest on such indebtedness consistent with applicable provisions of federal tax law. Where a budget contains an expenditure program to be partially or wholly financed from a bond issue to be authorized thereafter, expenditures of amounts anticipated to be reimbursed from the proceeds of the issuance and sale of such bonds must be made or incurred consistent with any applicable federal tax law requirements. [2011 c 210 § 2; 1969 ex.s. c 95 § 19.]

Application to previously issued bonds—2011 c 210: See note following RCW 39.46.040.

Chapter 35.34 RCW

BIENNIAL BUDGETS

Sections

35.34.220 Funds received from sales of bonds and warrants—Expenditure program—Federal tax law.

35.34.220 Funds received from sales of bonds and warrants—Expenditure program—Federal tax law. Moneys received from the sale of bonds or warrants must be used for no other purpose than that for which they were issued. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued, it must be used for the payment of principal of or interest on such indebtedness consistent with applicable provisions of federal tax law. Where a budget contains an expenditure program to be partially or wholly financed from a bond issue to be authorized thereafter, expenditures of amounts anticipated to be reimbursed from the proceeds of the issuance and sale of such bonds must be made or incurred consistent with any applicable federal tax law requirements. [2011 c 210 § 3; 1985 c 175 § 25.]

Application to previously issued bonds—2011 c 210: See note following RCW 39.46.040.

Chapter 35.43 RCW

LOCAL IMPROVEMENTS—AUTHORITY—INITIATION OF PROCEEDINGS

Sections

35.43.040 Authority generally.

35.43.040 Authority generally. Whenever the public interest or convenience may require, the legislative authority of any city or town may order the whole or any part of any local improvement including but not restricted to those, or any combination thereof, listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not restricted to the planting, setting out, cultivating, maintaining, and renewing of shade or ornamental trees and shrubbery thereon; may order any and all work to be done necessary for completion thereof; and may levy and collect special assessments on property specially benefited thereby to pay the whole or any part of the expense thereof, viz:

(1) Alleys, avenues, boulevards, lanes, park drives, parkways, parking facilities, public places, public squares, public streets, their grading, regrading, planking, replanking, paving, repaving, macadamizing, remacadamizing, graveling, regravelling, piling, repiling, capping, recapping, or other improvement; if the management and control of park drives, parkways, and boulevards is vested in a board of park commissioners, the plans and specifications for their improvement must be approved by the board of park commissioners before their adoption;

(2) Auxiliary water systems;

(3) Auditoriums, field houses, gymnasiums, swimming pools, or other recreational, playground, museum, cultural, or arts facilities or structures;

(4) Bridges, culverts, and trestles and approaches thereto;

(5) Bulkheads and retaining walls;

(6) Dikes and embankments;

(7) Drains, sewers, and sewer appurtenances which as to trunk sewers shall include as nearly as possible all the territory which can be drained through the trunk sewer and sub-sewers connected thereto;

(8) Escalators or moving sidewalks together with the expense of operation and maintenance;

(9) Parks and playgrounds;

(10) Sidewalks, curbing, and crosswalks;

(11) Street lighting systems together with the expense of furnishing electrical energy, maintenance, and operation;

(12) Underground utilities transmission lines;

(13) Water mains, hydrants, and appurtenances which as to trunk water mains shall include as nearly as possible all the territory in the zone or district to which water may be distributed from the trunk water mains through lateral service and distribution mains and services;

(14) Fences, culverts, syphons, or coverings or any other feasible safeguards along, in place of, or over open canals or ditches to protect the public from the hazards thereof;

(15) Roadbeds, trackage, signalization, storage facilities for rolling stock, overhead and underground wiring, and any other stationary equipment reasonably necessary for the operation of an electrified public streetcar line;

(16) Systems of surface, underground, or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including passenger, terminal, station parking, and related facilities and properties, and such other facilities as may be necessary for passenger and vehicular access to and from such terminal, station, parking, and related facilities and properties, together with all lands,

rights-of-way, property, equipment, and accessories necessary for such systems and facilities;

(17) Convention center facilities or structures in cities incorporated before January 1, 1982, with a population over sixty thousand located in a county with a population over one million, other than the city of Seattle. Assessments for purposes of convention center facilities or structures may be levied only to the extent necessary to cover a funding shortfall that occurs when funds received from special excise taxes imposed pursuant to chapter 67.28 RCW are insufficient to fund the annual debt service for such facilities or structures, and may not be levied on property exclusively maintained as single-family or multifamily permanent residences whether they are rented, leased, or owner occupied;

(18) Programs of aquatic plant control, lake or river restoration, or water quality enhancement. Such programs must identify all the area of any lake or river which will be improved and must include the adjacent waterfront property specially benefited by such programs of improvements. Assessments may be levied only on waterfront property including any waterfront property owned by the department of natural resources or any other state agency. Notice of an assessment on a private leasehold in public property must comply with provisions of chapter 79.44 RCW. Programs under this subsection shall extend for a term of not more than five years;

(19) Railroad crossing protection devices, including maintenance and repair. Assessments for purposes of railroad crossing protection devices may not be levied on property owned or maintained by a railroad, railroad company, street railroad, or street railroad company, as defined in RCW 81.04.010, or a regional transit authority as defined in RCW 81.112.020; and

(20) Research laboratories, testing facilities, incubation facilities, and training centers built in areas designated as innovation partnership zones under RCW 43.330.270. [2011 c 85 § 1; 2009 c 435 § 1; 1997 c 452 § 16; 1989 c 277 § 1; 1985 c 397 § 1; 1983 c 291 § 1; 1981 c 17 § 1; 1969 ex.s. c 258 § 1; 1965 c 7 § 35.43.040. Prior: 1959 c 75 § 1; 1957 c 144 § 2; prior: (i) 1911 c 98 § 1; RRS § 9352. (ii) 1945 c 190 § 1, part; 1915 c 168 § 6, part; 1913 c 131 § 1, part; 1911 c 98 § 6, part; Rem. Supp. 1945 § 9357, part. (iii) 1911 c 98 § 15; RRS § 9367. (iv) 1911 c 98 § 58, part; RRS § 9411, part.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Additional notes found at www.leg.wa.gov

Chapter 35.58 RCW

METROPOLITAN MUNICIPAL CORPORATIONS

Sections

35.58.210	Metropolitan water pollution abatement advisory committee.
35.58.2795	Public transportation systems—Six-year transit plans.
35.58.2796	Public transportation systems—Annual report by department.

35.58.210 Metropolitan water pollution abatement advisory committee. If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water pollution abatement, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan water pollution abatement advisory

committee to be formed by notifying the legislative body of each component city and county which operates a sewer system to appoint one person to serve on such advisory committee and the board of commissioners of each water-sewer district which operates a sewer system, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee. The metropolitan water pollution abatement advisory committee shall meet at the time and place provided in the notice and elect a chair. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council in matters relating to the performance of the water pollution abatement function. [2011 c 124 § 1; 2009 c 549 § 2103; 1999 c 153 § 33; 1974 ex.s. c 70 § 7; 1965 c 7 § 35.58.210. Prior: 1957 c 213 § 21.]

Additional notes found at www.leg.wa.gov

35.58.2795 Public transportation systems—Six-year transit plans. By September 1st of each year, the legislative authority of each municipality, as defined in RCW 35.58.272, and each regional transit authority shall prepare a six-year transit development plan for that calendar year and the ensuing five years. The program shall be consistent with the comprehensive plans adopted by counties, cities, and towns, pursuant to chapter 35.63, 35A.63, or 36.70 RCW, the inherent authority of a first-class city or charter county derived from its charter, or chapter 36.70A RCW. The program shall contain information as to how the municipality intends to meet state and local long-range priorities for public transportation, capital improvements, significant operating changes planned for the system, and how the municipality intends to fund program needs. The six-year plan for each municipality and regional transit authority shall specifically set forth those projects of regional significance for inclusion in the transportation improvement program within that region. Each municipality and regional transit authority shall file the six-year program with the state department of transportation, the transportation improvement board, and cities, counties, and regional planning councils within which the municipality is located.

In developing its program, the municipality and the regional transit authority shall consider those policy recommendations affecting public transportation contained in the state transportation policy plan approved by the state transportation commission and, where appropriate, adopted by the legislature. The municipality shall conduct one or more public hearings while developing its program and for each annual update. [2011 c 371 § 1; 1994 c 158 § 6; 1990 1st ex.s. c 17 § 60; 1989 c 396 § 1.]

Additional notes found at www.leg.wa.gov

35.58.2796 Public transportation systems—Annual report by department. (1) The department of transportation shall develop an annual report summarizing the status of public transportation systems in the state for the previous calendar year. By December 1st of each year, the report must be made available to the transportation committees of the legislature and to each municipality, as defined in RCW

35.58.272, and to individual members of the municipality's legislative authority.

(2) To assist the department with preparation of the report, each municipality shall file a system report by September 1st of each year with the state department of transportation identifying its public transportation services for the previous calendar year and its objectives for improving the efficiency and effectiveness of those services. The system report shall address those items required for each public transportation system in the department's report.

(3) The department report shall describe individual public transportation systems, including contracted transportation services and dial-a-ride services, and include a statewide summary of public transportation issues and data. The descriptions shall include the following elements and such other elements as the department deems appropriate after consultation with the municipalities and the transportation committees of the legislature:

- (a) Equipment and facilities, including vehicle replacement standards;
- (b) Services and service standards;
- (c) Revenues, expenses, and ending balances, by fund source;
- (d) Policy issues and system improvement objectives, including community participation in development of those objectives and how those objectives address statewide transportation priorities;
- (e) Operating indicators applied to public transportation services, revenues, and expenses. Operating indicators shall include operating cost per passenger trip, operating cost per revenue vehicle service hour, passenger trips per revenue service hour, passenger trips per vehicle service mile, vehicle service hours per employee, and farebox revenue as a percent of operating costs.

(4) To the extent that information is available, the department report must include descriptive information on any other modes of public transportation, the impact of public transportation on transportation system performance, and how public transportation helps the state meet the transportation system policy goals described in RCW 47.04.280. [2011 c 371 § 2; 2005 c 319 § 101; 1989 c 396 § 2.]

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

**Chapter 35.63 RCW
PLANNING COMMISSIONS**

Sections

- 35.63.030 Commissioners—Number—Tenure—Compensation.
- 35.63.161 Manufactured housing communities—Prohibitions of city due to community status as a nonconforming use.
- 35.63.270 Application for a permit to site an energy plant or alternative energy resource—Written notice to United States department of defense.

35.63.030 Commissioners—Number—Tenure—Compensation. The ordinance, resolution, or act creating the commission shall set forth the number of members to be appointed, not more than one-third of which number may be ex officio members by virtue of office held in any municipality. The term of office for ex officio members shall correspond to their respective tenures. The term of office for the

first appointive members appointed to such commission shall be designated from one to six years in such manner as to provide that the fewest possible terms will expire in any one year. Thereafter the term of office for each appointive member shall be either four or six years, as determined by legislative action of the council.

Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired term. Members may be removed, after public hearing, by the appointing official, with the approval of his or her council or board, for inefficiency, neglect of duty, or malfeasance in office.

The members shall be selected without respect to political affiliations and they shall serve without compensation. [2011 c 59 § 1; 2009 c 549 § 2114; 1965 c 7 § 35.63.030. Prior: 1935 c 44 § 2, part; RRS § 9322-2, part.]

35.63.161 Manufactured housing communities—Prohibitions of city due to community status as a nonconforming use. (1) After June 10, 2004, a city may designate a new manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use.

(2) A city may not prohibit the entry or require the removal of a manufactured/mobile home, park model, or recreational vehicle authorized in a manufactured housing community under chapter 59.20 RCW on the basis of the community's status as a nonconforming use. [2011 c 158 § 9; 2004 c 210 § 1.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

35.63.270 Application for a permit to site an energy plant or alternative energy resource—Written notice to United States department of defense. (1) Upon receipt of an application for a permit to site an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the city or town shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

(a) A description of the proposed energy plant or alternative energy resource;

(b) The location of the site;

(c) The placement of the energy plant or alternative energy resource on the site;

(d) The date and time by which comments must be received by the city or town; and

(e) Contact information of the city or town permitting authority and the applicant.

(2) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a permit application is approved. The time period set forth by the city or town for receipt of such comments shall not extend the time period for the city's processing of the application.

(3) For the purpose of this section, "alternative energy resource," "energy plant," and "electrical transmission facil-

ity" shall each have the meaning set forth in RCW 80.50.020. [2011 c 261 § 3.]

Chapter 35.79 RCW

STREETS—VACATION

Sections

35.79.030 Hearing—Ordinance of vacation.

35.79.030 Hearing—Ordinance of vacation. The hearing on such petition may be held before the legislative authority, before a committee thereof, or before a hearing examiner, upon the date fixed by resolution or at the time the hearing may be adjourned to. If the hearing is before a committee the same shall, following the hearing, report its recommendation on the petition to the legislative authority which may adopt or reject the recommendation. If the hearing is held before a committee it shall not be necessary to hold a hearing on the petition before the legislative authority. If the hearing is before a hearing examiner, the hearing examiner shall, following the hearing, report its recommendation on the petition to the legislative authority, which may adopt or reject the recommendation: PROVIDED, That the hearing examiner must include in its report to the legislative authority an explanation of the facts and reasoning underlying a recommendation to deny a petition. If a hearing is held before a hearing examiner, it shall not be necessary to hold a hearing on the petition before the legislative authority. If the legislative authority determines to grant the petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and the ordinance may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value of the area vacated. The ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. A certified copy of such ordinance shall be recorded by the clerk of the legislative authority and in the office of the auditor of the county in which the vacated land is located. One-half of the revenue received by the city or town as compensation for the area vacated must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town. [2011 c 130 § 1; 2002 c 55 § 1; 2001 c 202 § 1; 1987 c 228 § 1; 1985 c 254 § 1; 1969 c 28 § 4. Prior: 1967 ex.s. c 129 § 1; 1967 c 123 § 1; 1965 c 7 § 35.79.030; prior: 1957 c 156 § 4; 1949 c 14 § 1; 1901 c 84 § 2; Rem. Supp. 1949 § 9298.]

Chapter 35.92 RCW MUNICIPAL UTILITIES

Sections

35.92.395 Voluntary donations for purpose of supporting hunger programs.

35.92.395 Voluntary donations for purpose of supporting hunger programs. (1) Municipal utilities under this chapter may request voluntary donations from their customers for the purpose of supporting hunger programs.

(2) Voluntary donations collected by municipal utilities under this section must be used by the municipal utility to support the maintenance and operation of hunger programs.

(3) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW.

(4) Nothing in this section precludes a municipal utility from requesting voluntary donations to support other programs. [2011 c 226 § 2.]

Chapter 35.102 RCW MUNICIPAL BUSINESS AND OCCUPATION TAX

Sections

35.102.150 Allocation of income—Printing and publishing activities.

35.102.150 Allocation of income—Printing and publishing activities. Notwithstanding RCW 35.102.130, a city that imposes a business and occupation tax must allocate a person's gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines are those activities to which the tax rates in RCW *82.04.260(13) and 82.04.280(1)(a) apply. [2011 c 174 § 201; 2010 1st sp.s. c 23 § 519; 2009 c 461 § 4; 2006 c 272 § 1.]

***Reviser's note:** RCW 82.04.260 was amended by 2011 c 2 § 203 (Initiative Measure No. 1107), changing subsection (13) to subsection (14).

Effective date—2010 1st sp.s. c 23: See note following RCW 82.04.4292.

Findings—Intent—2010 1st sp.s. c 23: See notes following RCW 82.04.220.

Effective date—Contingent effective date—2009 c 461: See note following RCW 82.04.280.

Effective date—2006 c 272: "This act takes effect January 1, 2008." [2006 c 272 § 2.]

Chapter 35.104 RCW HEALTH SCIENCES AND SERVICES AUTHORITIES

Sections

35.104.040 Applications.

35.104.040 Applications. (1) The higher education coordinating board may approve applications submitted by local governments for an area's designation as a health sciences and services authority under this chapter. The director must determine the division to review applications submitted

by local governments under this chapter. The application for designation must be in the form and manner and contain such information as the higher education coordinating board may prescribe, provided the application:

(a) Contains sufficient information to enable the director to determine the viability of the proposal;

(b) Demonstrates that an ordinance or resolution has been passed by the legislative authority of a local government that delineates the boundaries of an area that may be designated an authority;

(c) Is submitted on behalf of the local government, or, if that office does not exist, by the legislative body of the local government;

(d) Demonstrates that the public funds directed to programs or facilities in the authority will leverage private sector resources and contributions to activities to be performed;

(e) Provides a plan or plans for the development of the authority as an entity to advance as a cluster for health sciences education, health sciences research, biotechnology development, biotechnology product commercialization, and/or health care services; and

(f) Demonstrates that the state has previously provided funds to health sciences and services programs or facilities in the applicant city, town, or county.

(2) The director must determine the division to develop criteria to evaluate the application. The criteria must include:

(a) The presence of infrastructure capable of spurring development of the area as a center of health sciences and services;

(b) The presence of higher education facilities where undergraduate or graduate coursework or research is conducted; and

(c) The presence of facilities in which health services are provided.

(3) There may be no more than two authorities statewide.

(4) An authority may only be created in a county with a population of less than one million persons and located east of the crest of the Cascade mountains.

(5) The director may reject or approve an application. When denying an application, the director must specify the application's deficiencies. The decision regarding such designation as it relates to a specific local government is final; however, a rejected application may be resubmitted.

(6) Applications are due by December 31, 2010, and must be processed within sixty days of submission.

(7) The director may, at his or her discretion, amend the boundaries of an authority upon the request of the local government.

(8) The higher education coordinating board may adopt any rules necessary to implement this chapter.

(9) The higher education coordinating board must develop evaluation criteria that enables the local governments to measure the effectiveness of the program. [2011 c 155 § 1; 2010 1st sp.s. c 33 § 2; 2007 c 251 § 4.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

Title 35A

OPTIONAL MUNICIPAL CODE

Chapters

- 35A.12** Mayor-council plan of government.
- 35A.13** Council-manager plan of government.
- 35A.14** Annexation by code cities.
- 35A.21** Provisions affecting all code cities.
- 35A.33** Budgets in code cities.
- 35A.34** Biennial budgets.
- 35A.63** Planning and zoning in code cities.
- 35A.80** Public utilities.

Chapter 35A.12 RCW

MAYOR-COUNCIL PLAN OF GOVERNMENT

Sections

- 35A.12.010 Elective city officers—Size of council.

35A.12.010 Elective city officers—Size of council.

The government of any noncharter code city or charter code city electing to adopt the mayor-council plan of government authorized by this chapter shall be vested in an elected mayor and an elected council. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants, the council shall consist of seven members. A city with a population of less than twenty-five hundred at the time of reclassification as an optional municipal code city may choose to maintain a seven-member council. The decision concerning the number of councilmembers shall be made by the council and be incorporated as a section of the ordinance adopting for the city the classification of noncharter code city. If the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven-member council. If, after a city has become a mayor-council code city, its population increases to twenty-five hundred or more inhabitants, the number of council offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of council offices in the city. When the population of a mayor-council code city having five council offices increases to five thousand or more inhabitants, the number of council offices in the city shall increase from five to seven members. In the event of an increase in the number of council offices, the city council shall, by majority vote, pursuant to RCW 35A.12.050, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the mayor-council plan of government set forth in this chapter, may provide for an uneven number of councilmembers not exceeding eleven. For the purposes of determining population under this section, cities may include or exclude the population of any state correctional facility located within the city.

A noncharter code city of less than five thousand inhabitants which has elected the mayor-council plan of government and which has seven council offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of council offices to five. The ordinance shall specify which two council offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained council office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old mayor-council plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government. [2011 c 14 § 1; 2009 c 549 § 3005; 1997 c 361 § 6; 1994 c 223 § 30; 1994 c 81 § 71; 1985 c 106 § 1; 1983 c 128 § 1; 1979 ex.s. c 18 § 19; 1979 c 151 § 33; 1967 ex.s. c 119 § 35A.12.010.]

Population determinations, office of financial management: Chapter 43.62 RCW.

Additional notes found at www.leg.wa.gov

Chapter 35A.13 RCW

COUNCIL-MANAGER PLAN OF GOVERNMENT

Sections

- 35A.13.010 City officers—Size of council.

35A.13.010 City officers—Size of council. The councilmembers shall be the only elective officers of a code city electing to adopt the council-manager plan of government authorized by this chapter, except where statutes provide for an elective municipal judge. The council shall appoint an officer whose title shall be "city manager" who shall be the chief executive officer and head of the administrative branch of the city government. The city manager shall be responsible to the council for the proper administration of all affairs of the code city. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants the council shall consist of seven members: PROVIDED, That if the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven-member council. If, after a city has become a council-manager code city its population increases to twenty-five hundred or more inhabitants, the number of council offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of council offices in the city. When the population of a council-manager code city having five council offices increases to five thousand or more inhabitants, the number of council offices in the city shall increase from five to seven members. In the event of an increase in the number of council offices, the city council shall, by majority vote, pursuant to RCW 35A.13.020, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year

term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the council-manager plan of government set forth in this chapter may provide for an uneven number of councilmembers not exceeding eleven.

A noncharter code city of less than five thousand inhabitants which has elected the council-manager plan of government and which has seven council offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of council offices to five. The ordinance shall specify which two council offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained council office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old council-manager plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government.

For the purposes of determining population under this section, cities may include or exclude the population of any state correctional facility located within the city. [2011 c 14 § 2; 2009 c 549 § 3016; 1994 c 223 § 35; 1994 c 81 § 72; 1987 c 3 § 16; 1985 c 106 § 2; 1983 c 128 § 2; 1979 ex.s. c 18 § 24; 1979 c 151 § 34; 1967 ex.s. c 119 § 35A.13.010.]

Population determinations, office of financial management: Chapter 43.62 RCW.

Additional notes found at www.leg.wa.gov

Chapter 35A.14 RCW

ANNEXATION BY CODE CITIES

Sections

35A.14.700 Determining population of annexed territory—Certificate—As basis for allocation of state funds—Revised certificate.

35A.14.700 Determining population of annexed territory—Certificate—As basis for allocation of state funds—Revised certificate. (1) Whenever any territory is annexed to a code city, a certificate as hereinafter provided shall be submitted in triplicate to the office of financial management within thirty days of the effective date of annexation specified in the relevant ordinance. After approval of the certificate, the office of financial management shall retain the original copy in its files, and transmit the second copy to the department of transportation and return the third copy to the code city. Such certificates shall be in such form and contain such information as shall be prescribed by the office of financial management. A copy of the complete ordinance containing a legal description and a map showing specifically the boundaries of the annexed territory shall be attached to each of the three copies of the certificate. The certificate shall be signed by the mayor and attested by the city clerk. Upon request, the office of financial management shall furnish certification forms to any code city.

(2)(a) The resident population of the annexed territory shall be determined by, or under the direction of, the mayor of the code city. (b) If the annexing code city has a population of ten thousand or less, the annexed territory consists entirely of one or more partial federal census blocks, or 2010 federal decennial census data has not been released within twelve months immediately prior to the date of annexation, the population determination shall consist of an actual enumeration of the population.

(c) In any circumstance, the code city may choose to have the population determination of the entire annexed territory consist of an actual enumeration. However, if the code city does not use actual enumeration for determining population, the annexed territory includes or consists of one or more complete federal census blocks, and 2010 federal decennial census data has been released within twelve months immediately prior to the date of annexation, the population determination shall consist of:

(i) Relevant 2010 federal decennial census data pertaining to the complete block or blocks, as such data has been updated by the most recent official population estimate released by the office of financial management pursuant to RCW 43.62.030;

(ii) An actual enumeration of any population located within the annexed territory but outside the complete federal census block or blocks; and

(iii) If the office of financial management, at least two weeks prior to the date of annexation, confirms the existence of a known census error within a complete federal census block and identifies a structure or complex listed in (c)(iii)(A) through (E) of this subsection (2) as a likely source of the error, an actual enumeration of one or more of the block's identified:

(A) Group quarters;

(B) Mobile home parks;

(C) Apartment buildings that are composed of at least fifty units and are certified for occupancy between January 1, 2010, and April 1, 2011;

(D) Missing subdivisions; and

(E) Closures of any of the categories in (c)(iii)(A) through (D) of this subsection.

(d) Whenever an actual enumeration is used, it shall be made in accordance with the practices and policies of, and subject to the approval of, the office of financial management.

(e) The code city shall be responsible for the full cost of the population determination.

(3) Upon approval of the annexation certificate, the office of financial management shall forward to each state official or department responsible for making allocations or payments to cities or towns, a revised certificate reflecting the increase in population due to such annexation. Upon and after the date of the commencement of the next quarterly period, the population determination indicated in such revised certificate shall be used as the basis for the allocation and payment of state funds to such city or town.

For the purposes of this section, each quarterly period shall commence on the first day of the months of January, April, July, and October. Whenever a revised certificate is forwarded by the office of financial management thirty days or less prior to the commencement of the next quarterly

period, the population of the annexed territory shall not be considered until the commencement of the following quarterly period.

(4) Until an annexation certificate is filed and approved as provided herein, such annexed territory shall not be considered by the office of financial management in determining the population of such code city. [2011 c 342 § 2; 1979 ex.s. c 18 § 28; 1979 c 151 § 35; 1975 1st ex.s. c 31 § 2; 1967 ex.s. c 119 § 35A.14.700.]

Effective date—2011 c 342: See note following RCW 35.13.260.

Population determinations, office of financial management: Chapter 43.62 RCW.

Additional notes found at www.leg.wa.gov

Chapter 35A.21 RCW

PROVISIONS AFFECTING ALL CODE CITIES

Sections

35A.21.340 Contractors—Authority of city to verify registration and report violations.

35A.21.340 Contractors—Authority of city to verify registration and report violations. A city that issues a business license to a person required to be registered under chapter 18.27 RCW may verify that the person is registered under chapter 18.27 RCW and report violations to the department of labor and industries. The department of revenue must conduct the verification for cities that participate in the master license system. [2011 c 298 § 23; 2009 c 432 § 3.]

Purpose—Intent—Agency transfer—Contracting—Effective date—2011 c 289: See notes following RCW 19.02.020.

Report—2009 c 432: See note following RCW 18.27.062.

Chapter 35A.33 RCW

BUDGETS IN CODE CITIES

Sections

35A.33.130 Funds received from sales of bonds and warrants—Expenditures program—Federal tax law.

35A.33.130 Funds received from sales of bonds and warrants—Expenditures program—Federal tax law. Moneys received from the sale of bonds or warrants must be used for no other purpose than that for which they were issued. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued it must be used for the payment of principal of or interest on such indebtedness consistent with applicable provisions of federal tax law. Where a budget contains an expenditure program to be partially or wholly financed from a bond issue to be authorized thereafter, expenditures of amounts anticipated to be reimbursed from the proceeds of the issuance and sale of such bonds must be made or incurred consistent with any applicable federal tax law requirements. [2011 c 210 § 4; 1967 ex.s. c 119 § 35A.33.130.]

Application to previously issued bonds—2011 c 210: See note following RCW 39.46.040.

[2011 RCW Supp—page 680]

Chapter 35A.34 RCW

BIENNIAL BUDGETS

Sections

35A.34.220 Funds received from sales of bonds and warrants—Expenditures program—Federal tax law.

35A.34.220 Funds received from sales of bonds and warrants—Expenditures program—Federal tax law. Moneys received from the sale of bonds or warrants must be used for no other purpose than that for which they were issued. If any unexpended fund balance remains from the proceeds realized from the bonds or warrants after the accomplishment of the purpose for which they were issued, it must be used for the payment of principal of or interest on such indebtedness consistent with applicable provisions of federal tax law. Where a budget contains an expenditure program to be partially or wholly financed from a bond issue to be authorized thereafter, expenditures of amounts anticipated to be reimbursed from the proceeds of the issuance and sale of such bonds must be made or incurred consistent with any applicable federal tax law requirements. [2011 c 210 § 5; 1985 c 175 § 54.]

Application to previously issued bonds—2011 c 210: See note following RCW 39.46.040.

Chapter 35A.63 RCW

PLANNING AND ZONING IN CODE CITIES

Sections

35A.63.146 Manufactured housing communities—Prohibitions of code city due to community status as a nonconforming use.

35A.63.290 Application for a permit to site an energy plant or alternative energy resource—Written notice to United States department of defense.

35A.63.146 Manufactured housing communities—Prohibitions of code city due to community status as a nonconforming use. (1) After June 10, 2004, a code city may designate a manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use.

(2) A code city may not prohibit the entry or require the removal of a manufactured/mobile home, park model, or recreational vehicle authorized in a manufactured housing community under chapter 59.20 RCW on the basis of the community's status as a nonconforming use. [2011 c 158 § 10; 2004 c 210 § 2.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

35A.63.290 Application for a permit to site an energy plant or alternative energy resource—Written notice to United States department of defense. (1) Upon receipt of an application for a permit to site an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the city shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

- (a) A description of the proposed energy plant or alternative energy resource;
- (b) The location of the site;
- (c) The placement of the energy plant or alternative energy resource on the site;
- (d) The date and time by which comments must be received by the city; and
- (e) Contact information of the city permitting authority and the applicant.

(2) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a permit application is approved. The time period set forth by the city for receipt of such comments shall not extend the time period for the city's processing of the application.

(3) For the purpose of this section, "alternative energy resource," "energy plant," and "electrical transmission facility" shall each have the meaning set forth in RCW 80.50.020. [2011 c 261 § 4.]

Chapter 35A.80 RCW PUBLIC UTILITIES

Sections

35A.80.060 Voluntary donations for purpose of supporting hunger programs.

35A.80.060 Voluntary donations for purpose of supporting hunger programs. (1) Code cities providing utility services under this chapter may request voluntary donations from their customers for the purpose of supporting hunger programs.

(2) Voluntary donations collected by code cities under this section must be used by the code city to support the maintenance and operation of hunger programs.

(3) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW.

(4) Nothing in this section precludes a code city providing utility services from requesting voluntary donations to support other programs. [2011 c 226 § 3.]

Title 36 COUNTIES

Chapters

- 36.01** General provisions.
- 36.18** Fees of county officers.
- 36.21** County assessor.
- 36.22** County auditor.
- 36.23** County clerk.
- 36.24** County coroner.
- 36.38** Admissions tax.
- 36.70** Planning enabling act.
- 36.70A** Growth management—Planning by selected counties and cities.
- 36.83** Roads and bridges—Service districts.

- 36.93** Local governmental organization—Boundaries—Review boards.
- 36.94** Sewerage, water, and drainage systems.
- 36.100** Public facilities districts.

Chapter 36.01 RCW GENERAL PROVISIONS

Sections

36.01.320 Application for a permit to site an energy plant or alternative energy resource—Written notice to United States department of defense.

36.01.320 Application for a permit to site an energy plant or alternative energy resource—Written notice to United States department of defense. (1) Upon receipt of an application for a permit to site an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the county shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

- (a) A description of the proposed energy plant or alternative energy resource;
- (b) The location of the site;
- (c) The number and placement of the energy plant or alternative energy resource on the site;
- (d) The date and time by which comments must be received by the county; and
- (e) Contact information of the county permitting authority and the applicant.

(2) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a permit application is approved. The time period set forth by the county for receipt of such comments shall not extend the time period for the county's processing of the application.

(3) For the purpose of this section, "alternative energy resource," "energy plant," and "electrical transmission facility" shall each have the meaning set forth in RCW 80.50.020. [2011 c 261 § 2.]

Chapter 36.18 RCW FEES OF COUNTY OFFICERS

Sections

36.18.018 Fees to state court, administrative office of the courts—Appellate review fee and surcharge—Variable fee for copies and reports.

36.18.020 Clerk's fees, surcharges.

36.18.018 Fees to state court, administrative office of the courts—Appellate review fee and surcharge—Variable fee for copies and reports. (1) State revenue collected by county clerks under subsection (2) of this section must be transmitted to the appropriate state court. The administrative office of the courts shall retain fees collected under subsection (3) of this section.

(2) For appellate review under RAP 5.1(b), two hundred fifty dollars must be charged.

(3) For all copies and reports produced by the administrative office of the courts as permitted under RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(4) Until July 1, 2013, in addition to the fee established under subsection (2) of this section, a surcharge of thirty dollars is established for appellate review. The county clerk shall transmit seventy-five percent of this surcharge to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county. [2011 1st sp.s. c 44 § 3; 2009 c 572 § 3; 2005 c 282 § 43; 1995 c 292 § 15.]

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

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

36.18.020 Clerk's fees, surcharges. (1) Revenue collected under this section is subject to division with the state under RCW 36.18.025 and with the county or regional law library fund under RCW 27.24.070, except as provided in subsection (5) of this section.

(2) Clerks of superior courts shall collect the following fees for their official services:

(a) In addition to any other fee required by law, the party filing the first or initial document in any civil action, including, but not limited to an action for restitution, adoption, or change of name, and any party filing a counterclaim, cross-claim, or third-party claim in any such civil action, shall pay, at the time the document is filed, a fee of two hundred dollars except, in an unlawful detainer action under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a case initiating filing fee of forty-five dollars, or in proceedings filed under RCW 28A.225.030 alleging a violation of the compulsory attendance laws where the petitioner shall not pay a filing fee. The forty-five dollar filing fee under this subsection for an unlawful detainer action shall not include an order to show cause or any other order or judgment except a default order or default judgment in an unlawful detainer action.

(b) Any party, except a defendant in a criminal case, filing the first or initial document on an appeal from a court of limited jurisdiction or any party on any civil appeal, shall pay, when the document is filed, a fee of two hundred dollars.

(c) For filing of a petition for judicial review as required under RCW 34.05.514 a filing fee of two hundred dollars.

(d) For filing of a petition for unlawful harassment under RCW 10.14.040 a filing fee of fifty-three dollars.

(e) For filing the notice of debt due for the compensation of a crime victim under RCW 7.68.120(2)(a) a fee of two hundred dollars.

(f) In probate proceedings, the party instituting such proceedings, shall pay at the time of filing the first document therein, a fee of two hundred dollars.

(g) For filing any petition to contest a will admitted to probate or a petition to admit a will which has been rejected, or a petition objecting to a written agreement or memorandum as provided in RCW 11.96A.220, there shall be paid a fee of two hundred dollars.

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, a defendant in a criminal case shall be liable for a fee of two hundred dollars.

(i) With the exception of demands for jury hereafter made and garnishments hereafter issued, civil actions and probate proceedings filed prior to midnight, July 1, 1972, shall be completed and governed by the fee schedule in effect as of January 1, 1972. However, no fee shall be assessed if an order of dismissal on the clerk's record be filed as provided by rule of the supreme court.

(3) No fee shall be collected when a petition for relinquishment of parental rights is filed pursuant to RCW 26.33.080 or for forms and instructional brochures provided under RCW 26.50.030.

(4) No fee shall be collected when an abstract of judgment is filed by the county clerk of another county for the purposes of collection of legal financial obligations.

(5)(a) Until July 1, 2013, in addition to the fees required to be collected under this section, clerks of the superior courts must collect surcharges as provided in this subsection (5) of which seventy-five percent must be remitted to the state treasurer for deposit in the judicial stabilization trust account and twenty-five percent must be retained by the county.

(b) On filing fees required to be collected under subsection (2)(b) of this section, a surcharge of twenty dollars must be collected.

(c) On all filing fees required to be collected under this section, except for fees required under subsection (2)(b), (d), and (h) of this section, a surcharge of thirty dollars must be collected. [2011 1st sp.s. c 44 § 5. Prior: 2009 c 572 § 4; 2009 c 479 § 21; 2009 c 417 § 3; prior: 2005 c 457 § 19; 2005 c 374 § 5; 2000 c 9 § 1; 1999 c 42 § 635; 1996 c 211 § 2; prior: 1995 c 312 § 70; 1995 c 292 § 10; 1993 c 435 § 1; 1992 c 54 § 1; 1989 c 342 § 1; prior: 1987 c 382 § 3; 1987 c 202 § 201; 1987 c 56 § 3; prior: 1985 c 24 § 1; 1985 c 7 § 104; 1984 c 263 § 29; 1981 c 330 § 5; 1980 c 70 § 1; 1977 ex.s. c 107 § 1; 1975 c 30 § 1; 1973 c 16 § 1; 1973 c 38 § 1; prior: 1972 ex.s. c 57 § 5; 1972 ex.s. c 20 § 1; 1970 ex.s. c 32 § 1; 1967 c 26 § 9; 1963 c 4 § 36.18.020; prior: 1961 c 304 § 1; 1961 c 41 § 1; 1951 c 51 § 5; 1907 c 56 § 1, part, p 89; 1903 c 151 § 1, part, p 294; 1893 c 130 § 1, part, p 421; Code 1881 § 2086, part, p 355; 1869 p 364 § 1, part; 1863 p 391 § 1, part; 1861 p 34 § 1, part; 1854 p 368 § 1, part; RRS § 497, part.]

Rules of court: *Cf. RAP 14.3, 18.22.*

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

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

Effective date—2009 c 479: See note following RCW 2.56.030.

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

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

Additional notes found at www.leg.wa.gov

Chapter 36.21 RCW COUNTY ASSESSOR

Sections

36.21.011 Appointment of deputies and assistants—Engaging expert appraisers—Employment and classification plans for appraisers.

36.21.011 Appointment of deputies and assistants—Engaging expert appraisers—Employment and classification plans for appraisers. Any assessor who deems it

necessary in order to complete the listing and the valuation of the property of the county within the time prescribed by law, (1) may appoint one or more well qualified persons to act as assistants or deputies who shall not engage in the private practice of appraising within the county in which he or she is employed without the written permission of the assessor filed with the auditor; and each such assistant or deputy so appointed shall, under the direction of the assessor, after taking the required oath, perform all the duties enjoined upon, vested in or imposed upon assessors, and (2) may contract with any persons, firms or corporations, who are expert appraisers, to assist in the valuation of property.

To assist each assessor in obtaining adequate and well qualified assistants or deputies, the office of financial management, after consultation with the Washington state association of county assessors, the Washington state association of counties, and the department of revenue, shall establish by July 1, 1967, and shall thereafter maintain, a classification and salary plan for those employees of an assessor who act as appraisers. The plan shall recommend the salary range and employment qualifications for each position encompassed by it, and shall, to the fullest extent practicable, conform to the classification plan, salary schedules and employment qualifications for state employees performing similar appraisal functions.

An assessor who intends to put such plan into effect shall inform the department of revenue and the county legislative authority of this intent in writing. The department of revenue and the county legislative authority may thereupon each designate a representative, and such representative or representatives as may be designated by the department of revenue or the county legislative authority, or both, shall form with the assessor a committee. The committee so formed may, by unanimous vote only, determine the required number of certified appraiser positions and their salaries necessary to enable the assessor to carry out the requirements relating to revaluation of property in chapter 84.41 RCW. The determination of the committee shall be certified to the county legislative authority. The committee may be formed only once in a period of four calendar years.

After such determination, the assessor may provide, in each of the four next succeeding annual budget estimates, for as many positions as are established in such determination. Each county legislative authority to which such a budget estimate is submitted shall allow sufficient funds for such positions. An employee may be appointed to a position covered by the plan only if the employee meets the employment qualifications established by the plan. [2011 1st sp.s. c 43 § 470; 1995 c 134 § 12. Prior: 1994 c 301 § 6; 1994 c 124 § 1; 1973 1st ex.s. c 11 § 1; 1971 ex.s. c 85 § 2; 1967 ex.s. c 146 § 7; 1963 c 4 § 36.21.011; prior: 1955 c 251 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 36.22 RCW COUNTY AUDITOR

Sections

36.22.175 Surcharge for local government archives and records management—Records management training—Eastern Washington regional facility.

36.22.178 Affordable housing for all surcharge—Permissible uses.
36.22.179 Surcharge for local homeless housing and assistance—Use.
36.22.1791 Additional surcharge for local homeless housing and assistance—Use.
36.22.181 Surcharge for prosecution of mortgage lending fraud—Transmittal to state treasurer. (*Expires June 30, 2016.*)

36.22.175 Surcharge for local government archives and records management—Records management training—Eastern Washington regional facility. (1)(a) In addition to any other charge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for each document recorded. Revenue generated through this surcharge shall be transmitted monthly to the state treasurer for deposit in the local government archives account under RCW 40.14.024. These funds shall be used solely for providing records scheduling, security microfilm inspection and storage, archival preservation, cataloging, and indexing for local government records and digital data and access to those records and data through the regional branch archives of the division of archives and records management.

(b) The division of archives and records management within the office of the secretary of state shall provide records management training for local governments and shall establish a competitive grant program to solicit and prioritize project proposals from local governments for potential funding to be paid for by funds from the auditor surcharge and tax warrant surcharge revenues. Application for specific projects may be made by local government agencies only. The state archivist in consultation with the advisory committee established under RCW 40.14.027 shall adopt rules governing project eligibility, evaluation, awarding of grants, and other criteria including requirements for records management training for grant recipients.

(2) The advisory committee established under RCW 40.14.027 shall review grant proposals and establish a prioritized list of projects to be considered for funding by January 1st of each even-numbered year, beginning in 2002. The evaluation of proposals and development of the prioritized list must be developed through open public meetings. Funding for projects shall be granted according to the ranking of each application on the prioritized list and projects will be funded only to the extent that funds are available. A grant award may have an effective date other than the date the project is placed on the prioritized list.

(3)(a) In addition to any other surcharge authorized by law, the county auditor shall charge a surcharge of one dollar per instrument for every document recorded after January 1, 2002. Revenue generated through this surcharge shall be transmitted to the state treasurer monthly for deposit in the local government archives account under RCW 40.14.024 to be used exclusively for: (i) The construction and improvement of a specialized regional facility located in eastern Washington designed to serve the archives, records management, and digital data management needs of local government; and (ii) payment of the certificate of participation issued for the Washington state heritage center to the extent there is an excess fund balance in the account and fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments on the certificate of participation.

(b) To the extent the facilities are used for the storage and retrieval of state agency records and digital data, that por-

tion of the construction of such facilities used for state government records and data shall be supported by other charges and fees paid by state agencies and shall not be supported by the surcharge authorized in this subsection, except that to the extent there is an excess fund balance in the account and fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments for the Washington state heritage center, the local government archives account under RCW 40.14.024 may be used for the Washington state heritage center.

(c) At such time that all debt service from construction of the specialized regional archive facility located in eastern Washington has been paid, fifty percent of the surcharge authorized by this subsection shall be reverted to the centennial document preservation and modernization account as prescribed in RCW 36.22.170 and fifty percent of the surcharge authorized by this section shall be reverted to the state treasurer for deposit in the public records efficiency, preservation, and access account to serve the archives, records management, and digital data management needs of local government, except that the state treasurer shall not revert funds to the centennial document preservation and modernization account and to the public records efficiency, preservation, and access account if fees generated under RCW 36.18.010 and 43.07.128 are insufficient to meet debt service payments on the Washington state heritage center. [2011 1st sp.s. c 50 § 931; 2008 c 328 § 6006; 2003 c 163 § 5; 2001 2nd sp.s. c 13 § 1; 1996 c 245 § 1.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Part headings not law—Severability—Effective date—2008 c 328: See notes following RCW 43.155.050.

Effective date—2001 2nd sp.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2001." [2001 2nd sp.s. c 13 § 3.]

Additional notes found at www.leg.wa.gov

36.22.178 Affordable housing for all surcharge—Permissible uses. The surcharge provided for in this section shall be named the affordable housing for all surcharge.

(1) Except as provided in subsection (3) of this section, a surcharge of ten dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. The county may retain up to five percent of these funds collected solely for the collection, administration, and local distribution of these funds. Of the remaining funds, forty percent of the revenue generated through this surcharge will be transmitted monthly to the state treasurer who will deposit the funds into the affordable housing for all account created in RCW 43.185C.190. The department of commerce must use these funds to provide housing and shelter for extremely low-income households, including but not limited to housing for victims of human trafficking and their families and grants for building operation and maintenance costs of housing projects or units within housing projects that are affordable to extremely low-income households with incomes at or below thirty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses.

(2) All of the remaining funds generated by this surcharge will be retained by the county and be deposited into a fund that must be used by the county and its cities and towns for eligible housing activities as described in this subsection that serve very low-income households with incomes at or below fifty percent of the area median income. The portion of the surcharge retained by a county shall be allocated to eligible housing activities that serve extremely low and very low-income households in the county and the cities within a county according to an interlocal agreement between the county and the cities within the county consistent with countywide and local housing needs and policies. A priority must be given to eligible housing activities that serve extremely low-income households with incomes at or below thirty percent of the area median income. Eligible housing activities to be funded by these county funds are limited to:

(a) Acquisition, construction, or rehabilitation of housing projects or units within housing projects that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including units for homeownership, rental units, seasonal and permanent farm worker housing units, units reserved for victims of human trafficking and their families, and single room occupancy units;

(b) Supporting building operation and maintenance costs of housing projects or units within housing projects eligible to receive housing trust funds, that are affordable to very low-income households with incomes at or below fifty percent of the area median income, and that require a supplement to rent income to cover ongoing operating expenses;

(c) Rental assistance vouchers for housing units that are affordable to very low-income households with incomes at or below fifty percent of the area median income, including rental housing vouchers for victims of human trafficking and their families, to be administered by a local public housing authority or other local organization that has an existing rental assistance voucher program, consistent with or similar to the United States department of housing and urban development's section 8 rental assistance voucher program standards; and

(d) Operating costs for emergency shelters and licensed overnight youth shelters.

(3) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust. [2011 c 110 § 1; 2007 c 427 § 1; 2005 c 484 § 18; 2002 c 294 § 2.]

Findings—Conflict with federal requirements—Effective date—2005 c 484: See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

Findings—2002 c 294: "The legislature recognizes housing affordability has become a significant problem for a large portion of society in many parts of Washington state in recent years. The state has traditionally focused its resources on housing for low-income populations. Additional funding resources are needed for building operation and maintenance activities for housing projects affordable to extremely low-income people, for example farmworkers or people with developmental disabilities. Affordable rents for extremely low-income people are not sufficient to cover the cost of building operations and maintenance. In addition resources are needed at the local level to assist in development and preservation of affordable low-income housing to address critical local housing needs." [2002 c 294 § 1.]

36.22.179 Surcharge for local homeless housing and assistance—Use. (1) In addition to the surcharge authorized in RCW 36.22.178, and except as provided in subsection (2)

of this section, an additional surcharge of ten dollars shall be charged by the county auditor for each document recorded, which will be in addition to any other charge allowed by law. During the 2009-11 and 2011-13 biennia, the surcharge shall be thirty dollars. The funds collected pursuant to this section are to be distributed and used as follows:

(a) The auditor shall retain two percent for collection of the fee, and of the remainder shall remit sixty percent to the county to be deposited into a fund that must be used by the county and its cities and towns to accomplish the purposes of chapter 484, Laws of 2005, six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs which directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county which elects as authorized in RCW 43.185C.080 to operate its own local homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county shall be transmitted at least quarterly to the city treasurer, without any deduction for county administrative costs, for use by the city for program costs which directly contribute to the goals of the city's local homeless housing plan; of the funds received by the city, it may use six percent for administrative costs for its homeless housing program.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use twelve and one-half percent of this amount for administration of the program established in RCW 43.185C.020, including the costs of creating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. The remaining eighty-seven and one-half percent is to be used by the department to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; grants and vouchers designated for victims of human trafficking and their families; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section does not apply to (a) assignments or substitutions of previously recorded deeds of trust, or (b) documents recording a birth, marriage, divorce, or death or any documents otherwise exempted from a recording fee under state law. [2011 c 110 § 2; 2009 c 462 § 1; 2007 c 427 § 4; 2005 c 484 § 9.]

Findings—Conflict with federal requirements—Effective date—2005 c 484: See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

36.22.1791 Additional surcharge for local homeless housing and assistance—Use. (1) In addition to the surcharges authorized in RCW 36.22.178 and 36.22.179, and except as provided in subsection (2) of this section, the county auditor shall charge an additional surcharge of eight dollars for each document recorded, which is in addition to any other charge allowed by law. The funds collected under this section are to be distributed and used as follows:

(a) The auditor shall remit ninety percent to the county to be deposited into a fund six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs that directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county that elects, as authorized in RCW 43.185C.080, to operate its own local homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county must be transmitted at least quarterly to the city treasurer for use by the city for program costs that directly contribute to the goals of the city's local homeless housing plan.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use the funds for administering the program established in RCW 43.185C.020, including the costs of creating and updating the statewide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. Remaining funds may also be used to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; grants and vouchers designated for victims of human trafficking and their families; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust. [2011 c 110 § 3; 2007 c 427 § 5.]

36.22.181 Surcharge for prosecution of mortgage lending fraud—Transmittal to state treasurer. (Expires June 30, 2016.) (1) Except as provided in subsection (2) of this section, a surcharge of one dollar shall be charged by the county auditor at the time of recording of each deed of trust, which will be in addition to any other charge authorized by law. The auditor may retain up to five percent of the funds collected to administer collection. The remaining funds shall be transmitted monthly to the state treasurer who will deposit the funds into the mortgage lending fraud prosecution account created in RCW 43.320.140. The department of financial institutions is responsible for the distribution of the funds in the account and shall, in consultation with the attorney general and local prosecutors, develop rules for the use of these funds to pursue criminal prosecution of fraudulent activities within the mortgage lending process.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust.

(3) This section expires June 30, 2016. [2011 c 129 § 2; 2006 c 21 § 1; 2003 c 289 § 1.]

Effective date—2011 c 129: See note following RCW 43.320.140.

Chapter 36.23 RCW
COUNTY CLERK

Sections

36.23.030 Records to be kept.

36.23.030 Records to be kept. The clerk of the superior court at the expense of the county shall keep the following records:

(1) A record in which he or she shall enter all appearances and the time of filing all pleadings in any cause;

(2) A docket in which before every session, he or she shall enter the titles of all causes pending before the court at that session in the order in which they were commenced, beginning with criminal cases, noting in separate columns the names of the attorneys, the character of the action, the pleadings on which it stands at the commencement of the session. One copy of this docket shall be furnished for the use of the court and another for the use of the members of the bar;

(3) A record for each session in which he or she shall enter the names of witnesses and jurors, with time of attendance, distance of travel, and whatever else is necessary to enable him or her to make out a complete cost bill;

(4) A record in which he or she shall record the daily proceedings of the court, and enter all verdicts, orders, judgments, and decisions thereof, which may, as provided by local court rule, be signed by the judge; but the court shall have full control of all entries in the record at any time during the session in which they were made;

(5) An execution docket and also one for a final record in which he or she shall make a full and perfect record of all criminal cases in which a final judgment is rendered, and all civil cases in which by any order or final judgment the title to real estate, or any interest therein, is in any way affected, and such other final judgments, orders, or decisions as the court may require;

(6) A record in which shall be entered all orders, decrees, and judgments made by the court and the minutes of the court in probate proceedings;

(7) A record of wills and bonds shall be maintained. Originals shall be placed in the original file and shall be preserved or duplicated pursuant to RCW 36.23.065;

(8) A record of letters testamentary, administration, and guardianship in which all letters testamentary, administration, and guardianship shall be recorded;

(9) A record of claims shall be entered in the appearance docket under the title of each estate or case, stating the name of each claimant, the amount of his or her claim and the date of filing of such;

(10) A memorandum of the files, in which at least one page shall be given to each estate or case, wherein shall be noted each paper filed in the case, and the date of filing each paper;

(11) A record of the number of petitions filed for restoration of the right to possess a firearm under chapter 9.41 RCW and the outcome of the petitions;

(12) Such other records as are prescribed by law and required in the discharge of the duties of his or her office. [2011 c 193 § 3; 2002 c 30 § 1; 1987 c 363 § 3; 1967 ex.s. c 34 § 2; 1963 c 4 § 36.23.030. Prior: (i) 1923 c 130 § 1; Code 1881 § 2179; 1863 p 417 § 6; 1854 p 366 § 6; RRS § 75. (ii)

[2011 RCW Supp—page 686]

1917 c 156 § 2; RRS § 1372. (iii) 1917 c 156 § 57; Code 1881 § 1384; 1863 p 219 § 118; 1860 p 181 § 85; RRS § 1427. (iv) 1917 c 156 § 72; Code 1881 § 1411; 1863 p 221 § 130; 1860 p 183 § 97; RRS § 1442.]

Chapter 36.24 RCW
COUNTY CORONER

Sections

36.24.155 Undisposed of remains—Entrusting to funeral homes or mortuaries.

36.24.155 Undisposed of remains—Entrusting to funeral homes or mortuaries. Whenever anyone shall die within a county without making prior plans for the disposition of his or her body and there is no other person willing to provide for the disposition of the body, the county coroner shall cause such body to be entrusted to a funeral home in the county where the body is found. Except in counties where the county coroner or medical examiner has established a preferred funeral home using a qualified bidding process, disposition shall be on a rotation basis, which shall treat equally all funeral homes or mortuaries desiring to participate, such rotation to be established by the coroner after consultation with representatives of the funeral homes or mortuaries in the county or counties involved. [2011 c 16 § 1; 2009 c 549 § 4038; 1969 ex.s. c 259 § 2.]

Human remains that have not been disposed: RCW 68.50.230.

Chapter 36.38 RCW
ADMISSIONS TAX

Sections

36.38.010 Taxes authorized—Exception as to schools.

36.38.010 Taxes authorized—Exception as to schools. (1) Any county may by ordinance enacted by its county legislative authority, levy and fix a tax of not more than one cent on twenty cents or fraction thereof to be paid for county purposes by persons who pay an admission charge to any place, including a tax on persons who are admitted free of charge or at reduced rates to any place for which other persons pay a charge or a regular higher charge for the same or similar privileges or accommodations; and require that one who receives any admission charge to any place must collect and remit the tax to the county treasurer of the county. However, no county may impose such tax on persons paying an admission to any activity of any elementary or secondary school or any public facility of a public facility district under chapter 35.57 or 36.100 RCW for which a tax is imposed under RCW 35.57.100 or 36.100.210.

(2) As used in this chapter, the term "admission charge" includes a charge made for season tickets or subscriptions, a cover charge, or a charge made for use of seats and tables, reserved or otherwise, and other similar accommodations; a charge made for food and refreshments in any place where any free entertainment, recreation, or amusement is provided; a charge made for rental or use of equipment or facilities for purpose of recreation or amusement, and where the rental of the equipment or facilities is necessary to the enjoyment of a

privilege for which a general admission is charged, the combined charges must be considered as the admission charge. Admission charge also includes any automobile parking charge where the amount of such charge is determined according to the number of passengers in any automobile.

(3) Subject to subsections (4) and (5) of this section, the tax authorized in this section is not exclusive and does not prevent any city or town within the taxing county, when authorized by law, from imposing within its corporate limits a tax of the same or similar kind. However, whenever the same or similar kind of tax is imposed by any such city or town, no such tax may be levied within the corporate limits of such city or town by the county.

(4) Notwithstanding subsection (3) of this section, the legislative authority of a county with a population of one million or more may exclusively levy taxes on events in baseball stadiums constructed on or after January 1, 1995, that are owned by a public facilities district under chapter 36.100 RCW and that have seating capacities over forty thousand at the rates of:

(a) Not more than one cent on twenty cents or fraction thereof, to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in RCW 82.14.0485. If the revenue from the tax exceeds the amount needed for that purpose, the excess must be placed in a contingency fund which must be used exclusively by the public facilities district to fund repair, reequipping, and capital improvement of the baseball stadium; and

(b) Not more than one cent on twenty cents or fraction thereof, to be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium as defined in RCW 82.14.0485. The tax imposed under this subsection (4)(b) expires when the bonds issued for the construction of the baseball stadium are retired, but not later than twenty years after the tax is first collected.

(5) Notwithstanding subsection (3) of this section, the legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.050 may levy and fix a tax on charges for admission to events in a stadium and exhibition center, as defined in RCW 36.102.010, constructed in the county on or after January 1, 1998, that is owned by a public stadium authority under chapter 36.102 RCW. The tax is exclusive and precludes the city or town within which the stadium and exhibition center is located from imposing a tax of the same or similar kind on charges for admission to events in the stadium and exhibition center, and precludes the imposition of a general county admissions tax on charges for admission to events in the stadium and exhibition center. For the purposes of this subsection, "charges for admission to events" means only the actual admission charge, exclusive of taxes and service charges and the value of any other benefit conferred by the admission. The tax authorized under this subsection is at the rate of not more than one cent on ten cents or fraction thereof. Revenues collected under this subsection must be deposited in the stadium and exhibition center account under RCW 43.99N.060 until the bonds issued under RCW 43.99N.020 for the construction of the stadium and exhibition center are retired. After the bonds issued for the construction of the stadium and exhibition center are retired, the

tax authorized under this section is used exclusively to fund repair, reequipping, and capital improvement of the stadium and exhibition center. The tax under this subsection may be levied upon the first use of any part of the stadium and exhibition center but may not be collected at any facility already in operation as of July 17, 1997. [2011 1st sp.s. c 38 § 2; 1999 c 165 § 20; 1997 c 220 § 301 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 203; 1995 1st sp.s. c 14 § 9; 1963 c 4 § 36.38.010. Prior: 1957 c 126 § 2; 1951 c 34 § 1; 1943 c 269 § 1; Rem. Supp. 1943 § 11241-10.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Additional notes found at www.leg.wa.gov

Chapter 36.70 RCW

PLANNING ENABLING ACT

Sections

36.70.493 Manufactured housing communities—Prohibitions of county due to community status as a nonconforming use.

36.70.493 Manufactured housing communities—Prohibitions of county due to community status as a nonconforming use. (1) After June 10, 2004, a county may designate a manufactured housing community as a nonconforming use, but may not order the removal or phased elimination of an existing manufactured housing community because of its status as a nonconforming use.

(2) A county may not prohibit the entry or require the removal of a manufactured/mobile home, park model, or recreational vehicle authorized in a manufactured housing community under chapter 59.20 RCW on the basis of the community's status as a nonconforming use. [2011 c 158 § 11; 2004 c 210 § 3.]

Transfer of residual funds to manufactured home installation training account—2011 c 158: See note following RCW 43.22A.100.

Chapter 36.70A RCW

GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES

Sections

36.70A.080 Comprehensive plans—Optional elements.
 36.70A.130 Comprehensive plans—Review procedures and schedules—Amendments.
 36.70A.200 Siting of essential public facilities—Limitation on liability. (*Effective January 1, 2012.*)
 36.70A.215 Review and evaluation program.
 36.70A.280 Growth management hearings board—Matters subject to review.
 36.70A.290 Growth management hearings board—Petitions—Evidence.
 36.70A.340 Noncompliance and sanctions.

VOLUNTARY STEWARDSHIP PROGRAM

36.70A.700 Purpose—Intent—2011 c 360.
 36.70A.702 Construction.
 36.70A.703 Definitions.
 36.70A.705 Voluntary stewardship program established—Administered by commission—Agency participation.
 36.70A.710 Critical areas protection—Alternative to RCW 36.70A.060—County's responsibilities—Procedures.
 36.70A.715 Funding by commission—County's duties—Watershed group established.
 36.70A.720 Watershed group's duties—Work plan—Conditional priority funding.

- 36.70A.725 Technical review of work plan—Time frame for action by director.
- 36.70A.730 Report by watershed group—Director consults with statewide advisory committee.
- 36.70A.735 When work plan is not approved, fails, or is unfunded—County's duties—Rules.
- 36.70A.740 Commission's duties—Timelines.
- 36.70A.745 Statewide advisory committee—Membership.
- 36.70A.750 Agricultural operators—Individual stewardship plan.
- 36.70A.755 Implementing the work plan.
- 36.70A.760 Agricultural operators—Withdrawal from program.
- 36.70A.904 Conflict with federal requirements—2011 c 360.

36.70A.080 Comprehensive plans—Optional elements. (1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction, including, but not limited to:

- (a) Conservation;
- (b) Solar energy; and
- (c) Recreation.

(2) A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

(3)(a) Cities that qualify as a receiving city may adopt a comprehensive plan element and associated development regulations that apply within receiving areas under chapter 39.108 RCW.

(b) For purposes of this subsection, the terms "receiving city" and "receiving area" have the same meanings as provided in RCW 39.108.010. [2011 c 318 § 801; 1990 1st ex.s. c 17 § 8.]

Rules—2011 c 318: See note following RCW 39.108.005.

36.70A.130 Comprehensive plans—Review procedures and schedules—Amendments. (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment

of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.031(2), provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsection (5) of this section, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) Except as provided in subsection (6) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before December 1, 2004, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2006, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before June 30, 2015, and every eight years thereafter, for King, Pierce, and Snohomish counties and the cities within those counties;

(b) On or before June 30, 2016, and every eight years thereafter, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

(c) On or before June 30, 2017, and every eight years thereafter, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before June 30, 2018, and every eight years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The

county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(c) A city that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(d) A county or city that is subject to a deadline established in subsection (4)(d) of this section and that meets the criteria established in subsection (6)(b) or (c) of this section may comply with the requirements of subsection (4)(d) of this section at any time within the thirty-six months after the extension provided in subsection (6)(b) or (c) of this section.

(e) A county that is subject to a deadline established in subsection (5)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(f) A city that is subject to a deadline established in subsection (5)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(g) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW:

(i) Complying with the deadlines in this section;

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas; or

(iii) Complying with the extension provisions of subsection (6)(b), (c), or (d) of this section.

(b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may

receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.

(b) A county that has made the election under RCW 36.70A.710(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:

(i) A work plan has been approved for that watershed in accordance with RCW 36.70A.725;

(ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;

(iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;

(iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or

(v) Three or more years have elapsed since the receipt of funding.

(c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW 36.70A.710(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW 36.70A.720(2)(c)(ii) that the watershed's goals and benchmarks for protection have been met. [2011 c 360 § 16; 2011 c 353 § 2. Prior: 2010 c 216 § 1; 2010 c 211 § 2; 2009 c 479 § 23; 2006 c 285 § 2; prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

Reviser's note: This section was amended by 2011 c 353 § 2 and by 2011 c 360 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—2011 c 353: "It is the legislature's intent to provide local governments with more time to meet certain statutory requirements. Many cities and counties in Washington are facing revenue shortfalls, higher expenses, and more difficulty with borrowing money as a result of the economic downturn. The effects of the economic downturn on the budgets of local governments will be felt most deeply from 2010 to 2012. Local governments are facing the combined impact of decreased tax revenues, a falloff in state and federal aid, and increased demand for social services. With the loss of tax revenue and state and federal aid, local governments are being forced to make significant cuts that will eliminate jobs, curtail essential services, and increase the number of people in need. Additionally, local governments are struggling to comply with certain statutory requirements. Local governments want to comply with these statutory requirements, but with budget constraints, they need more time to do so. The legislature does not intend to remove any existing statutory requirement, but rather modify the time under which a local government must meet certain statutory requirements." [2011 c 353 § 1.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Effective date—2009 c 479: See note following RCW 2.56.030.

Intent—2006 c 285: "There is a statewide interest in maintaining coordinated planning as called for in the legislative findings of the growth management act, RCW 36.70A.010. It is the intent of the legislature that smaller, slower-growing counties and cities be provided with flexibility in meeting the requirements to review local plans and development regulations in RCW 36.70A.130, while ensuring coordination and consistency with the plans of neighboring cities and counties." [2006 c 285 § 1.]

Intent—Effective date—2005 c 423: See notes following RCW 36.70A.030.

Intent—2005 c 294: "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

Effective date—2005 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 2005]." [2005 c 294 § 3.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Definitions: See RCW 36.70A.703.

RCW 36.70A.130(2) does not apply to master planned locations in industrial land banks: RCW 36.70A.367(2)(c).

Additional notes found at www.leg.wa.gov

36.70A.200 Siting of essential public facilities—Limitation on liability. (Effective January 1, 2012.) (1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process for siting secure community transition facilities and adopt or amend its development regulations as necessary to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(6) No person may bring a cause of action for civil damages based on the good faith actions of any county or city to provide for the siting of secure community transition facilities in accordance with this section and with the requirements of chapter 12, Laws of 2001 2nd sp. sess. For purposes of this subsection, "person" includes, but is not limited to, any individual, agency as defined in RCW 42.17A.005, corporation, partnership, association, and limited liability entity.

(7) Counties or cities siting facilities pursuant to subsection (2) or (3) of this section shall comply with RCW 71.09.341.

(8) The failure of a county or city to act by the deadlines established in subsections (2) and (3) of this section is not:

(a) A condition that would disqualify the county or city for grants, loans, or pledges under RCW 43.155.070 or 70.146.070;

(b) A consideration for grants or loans provided under RCW 43.17.250(2); or

(c) A basis for any petition under RCW 36.70A.280 or for any private cause of action. [2011 c 60 § 17; 2010 c 62 § 1; 2002 c 68 § 2; 2001 2nd sp.s. c 12 § 205; 1998 c 171 § 3; 1991 sp.s. c 32 § 1.]

Effective date—2011 c 60: See RCW 42.17A.919.

Purpose—2002 c 68: "The purpose of this act is to:

(1) Enable the legislature to act upon the recommendations of the joint select committee on the equitable distribution of secure community transition facilities established in section 225, chapter 12, Laws of 2001 2nd sp. sess.; and

(2) Harmonize the preemption provisions in RCW 71.09.250 with the preemption provisions applying to future secure community transition facilities to reflect the joint select committee's recommendation that the preemption granted for future secure community transition facilities be the same throughout the state." [2002 c 68 § 1.]

Severability—2002 c 68: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 68 § 19.]

Effective date—2002 c 68: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 21, 2002]." [2002 c 68 § 20.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

36.70A.215 Review and evaluation program. (1) Subject to the limitations in subsection (7) of this section, a county shall adopt, in consultation with its cities, countywide planning policies to establish a review and evaluation program. This program shall be in addition to the requirements of RCW 36.70A.110, 36.70A.130, and 36.70A.210. In

developing and implementing the review and evaluation program required by this section, the county and its cities shall consider information from other appropriate jurisdictions and sources. The purpose of the review and evaluation program shall be to:

(a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the countywide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and

(b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

(2) The review and evaluation program shall:

(a) Encompass land uses and activities both within and outside of urban growth areas and provide for annual collection of data on urban and rural land uses, development, critical areas, and capital facilities to the extent necessary to determine the quantity and type of land suitable for development, both for residential and employment-based activities;

(b) Provide for evaluation of the data collected under (a) of this subsection as provided in subsection (3) of this section. The evaluation shall be completed no later than one year prior to the deadline for review and, if necessary, update of comprehensive plans and development regulations as required by RCW 36.70A.130. The county and its cities may establish in the countywide planning policies indicators, benchmarks, and other similar criteria to use in conducting the evaluation;

(c) Provide for methods to resolve disputes among jurisdictions relating to the countywide planning policies required by this section and procedures to resolve inconsistencies in collection and analysis of data; and

(d) Provide for the amendment of the countywide policies and county and city comprehensive plans as needed to remedy an inconsistency identified through the evaluation required by this section, or to bring these policies into compliance with the requirements of this chapter.

(3) At a minimum, the evaluation component of the program required by subsection (1) of this section shall:

(a) Determine whether there is sufficient suitable land to accommodate the countywide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110;

(b) Determine the actual density of housing that has been constructed and the actual amount of land developed for commercial and industrial uses within the urban growth area since the adoption of a comprehensive plan under this chapter or since the last periodic evaluation as required by subsection (1) of this section; and

(c) Based on the actual density of development as determined under (b) of this subsection, review commercial, industrial, and housing needs by type and density range to determine the amount of land needed for commercial, industrial, and housing for the remaining portion of the twenty-year planning period used in the most recently adopted comprehensive plan.

(4) If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the countywide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RCW 36.70A.210, shall adopt amendments to countywide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.

(5)(a) Not later than July 1, 1998, the department shall prepare a list of methods used by counties and cities in carrying out the types of activities required by this section. The department shall provide this information and appropriate technical assistance to counties and cities required to or choosing to comply with the provisions of this section.

(b) By December 31, 2007, the department shall submit to the appropriate committees of the legislature a report analyzing the effectiveness of the activities described in this section in achieving the goals envisioned by the countywide planning policies and the comprehensive plans and development regulations of the counties and cities.

(6) From funds appropriated by the legislature for this purpose, the department shall provide grants to counties, cities, and regional planning organizations required under subsection (7) of this section to conduct the review and perform the evaluation required by this section.

(7) The provisions of this section shall apply to counties, and the cities within those counties, that were greater than one hundred fifty thousand in population in 1995 as determined by office of financial management population estimates and that are located west of the crest of the Cascade mountain range. Any other county planning under RCW 36.70A.040 may carry out the review, evaluation, and amendment programs and procedures as provided in this section. [2011 c 353 § 3; 1997 c 429 § 25.]

Intent—2011 c 353: See note following RCW 36.70A.130.

Additional notes found at www.leg.wa.gov

36.70A.280 Growth management hearings board—Matters subject to review. (1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with *RCW 36.70A.5801;

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under RCW 36.70A.735(1)(a) is not in compliance with the requirements of the program established under RCW 36.70A.710;

(d) That regulations adopted under RCW 36.70A.735(1)(b) are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or

(e) That a department certification under RCW 36.70A.735(1)(c) is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes. [2011 c 360 § 17; 2010 c 211 § 7; 2008 c 289 § 5; 2003 c 332 § 2; 1996 c 325 § 2; 1995 c 347 § 108; 1994 c 249 § 31; 1991 sp.s. c 32 § 9.]

***Reviser's note:** RCW 36.70A.5801 expired January 1, 2011.

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Findings—2008 c 289: "(1) The legislature recognizes that the implications of a changed climate will affect the people, institutions, and economies of Washington. The legislature also recognizes that it is in the public interest to reduce the state's dependence upon foreign sources of carbon fuels that do not promote energy independence or the economic strength of the state. The legislature finds that the state, including its counties, cities, and residents, must engage in activities that reduce greenhouse gas emissions and dependence upon foreign oil.

(2) The legislature further recognizes that: (a) Patterns of land use development influence transportation-related greenhouse gas emissions and the need for foreign oil; (b) fossil fuel-based transportation is the largest source of greenhouse gas emissions in Washington; and (c) the state and its residents will not achieve emission reductions established in *RCW 80.80.020 without a significant decrease in transportation emissions.

(3) The legislature, therefore, finds that it is in the public interest of the state to provide appropriate legal authority, where required, and to aid in the development of policies, practices, and methodologies that may assist coun-

ties and cities in addressing challenges associated with greenhouse gas emissions and our state's dependence upon foreign oil." [2008 c 289 § 1.]

***Reviser's note:** RCW 80.80.020 was repealed by 2008 c 14 § 13.

Application—2008 c 289: "This act is not intended to amend or affect chapter 353, Laws of 2007." [2008 c 289 § 6.]

Intent—2003 c 332: "This act is intended to codify the Washington State Court of Appeals holding in *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657 (2000), by mandating that to establish participation standing under the growth management act, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the growth management hearings board." [2003 c 332 § 1.]

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Definitions: See RCW 36.70A.703.

Additional notes found at www.leg.wa.gov

36.70A.290 Growth management hearings board—

Petitions—Evidence. (1) All requests for review to the growth management hearings board shall be initiated by filing a petition that includes a detailed statement of issues presented for resolution by the board. The board shall render written decisions articulating the basis for its holdings. The board shall not issue advisory opinions on issues not presented to the board in the statement of issues, as modified by any prehearing order.

(2) All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication as provided in (a) through (c) of this subsection.

(a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.

(b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

Except as provided in (c) of this subsection, for purposes of this section the date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

(c) For local governments planning under RCW 36.70A.040, promptly after approval or disapproval of a local government's shoreline master program or amendment thereto by the department of ecology as provided in RCW 90.58.090, the department of ecology shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved. For purposes of this section, the date of publication for the adoption or amendment of a shoreline master program is the date the department of ecology publishes notice that the shoreline master program or amendment thereto has been approved or disapproved.

(3) Unless the board dismisses the petition as frivolous or finds that the person filing the petition lacks standing, or the parties have filed an agreement to have the case heard in superior court as provided in RCW 36.70A.295, the board shall, within ten days of receipt of the petition, set a time for hearing the matter.

(4) The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

(5) The board, shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations. [2011 c 277 § 1; 2010 c 211 § 8; 1997 c 429 § 12; 1995 c 347 § 109. Prior: 1994 c 257 § 2; 1994 c 249 § 26; 1991 sp.s. c 32 § 10.]

Effective date—Transfer of power, duties, and functions—2010 c 211: See notes following RCW 36.70A.250.

Finding—Severability—Part headings and table of contents not law—1995 c 347: See notes following RCW 36.70A.470.

Additional notes found at www.leg.wa.gov

36.70A.340 Noncompliance and sanctions. Upon receipt from the board of a finding that a state agency, county, or city is in noncompliance under RCW 36.70A.330, or as a result of failure to meet the requirements of RCW 36.70A.210, the governor may either:

(1) Notify and direct the director of the office of financial management to revise allotments in appropriation levels;

(2) Notify and direct the state treasurer to withhold the portion of revenues to which the county or city is entitled under one or more of the following: The motor vehicle fuel tax, as provided in chapter 82.36 RCW; the transportation improvement account, as provided in RCW 47.26.084; the rural arterial trust account, as provided in RCW 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the liquor profit tax, as provided in RCW 66.08.190; and the liquor excise tax, as provided in RCW 82.08.170; or

(3) File a notice of noncompliance with the secretary of state and the county or city, which shall temporarily rescind the county or city's authority to collect the real estate excise tax under RCW 82.46.030 until the governor files a notice rescinding the notice of noncompliance. [2011 c 120 § 2; 1991 sp.s. c 32 § 26.]

VOLUNTARY STEWARDSHIP PROGRAM

36.70A.700 Purpose—Intent—2011 c 360. (1) The purpose of chapter 360, Laws of 2011 is to establish the voluntary stewardship program as recommended in the report submitted by the William D. Ruckelshaus Center to the legislature as required by chapter 353, Laws of 2007 and chapter 203, Laws of 2010.

(2) It is the intent of chapter 360, Laws of 2011 to:

(a) Promote plans to protect and enhance critical areas within the area where agricultural activities are conducted, while maintaining and improving the long-term viability of agriculture in the state of Washington and reducing the conversion of farmland to other uses;

(b) Focus and maximize voluntary incentive programs to encourage good riparian and ecosystem stewardship as an alternative to historic approaches used to protect critical areas;

(c) Rely upon RCW 36.70A.060 for the protection of critical areas for those counties that do not choose to participate in this program;

(d) Leverage existing resources by relying upon existing work and plans in counties and local watersheds, as well as existing state and federal programs to the maximum extent practicable to achieve program goals;

(e) Encourage and foster a spirit of cooperation and partnership among county, tribal, environmental, and agricultural interests to better assure the program success;

(f) Improve compliance with other laws designed to protect water quality and fish habitat; and

(g) Rely upon voluntary stewardship practices as the primary method of protecting critical areas and not require the cessation of agricultural activities. [2011 c 360 § 1.]

36.70A.702 Construction. Nothing in RCW 36.70A.700 through 36.70A.760 may be construed to:

(1) Interfere with or supplant the ability of any agricultural operator to work cooperatively with a conservation district or participate in state or federal conservation programs;

(2) Require an agricultural operator to discontinue agricultural activities legally existing before July 22, 2011;

(3) Prohibit the voluntary sale or leasing of land for conservation purposes, either in fee or as an easement;

(4) Grant counties or state agencies additional authority to regulate critical areas on lands used for agricultural activities; and

(5) Limit the authority of a state agency, local government, or landowner to carry out its obligations under any other federal, state, or local law. [2011 c 360 § 15.]

36.70A.703 Definitions. The definitions in this section apply to RCW 36.70A.700 through 36.70A.760 and RCW 36.70A.130 and 36.70A.280 unless the context clearly requires otherwise.

(1) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.

(2) "Commission" means the state conservation commission as defined in RCW 89.08.030.

(3) "Director" means the executive director of the state conservation commission.

(4) "Enhance" or "enhancement" means to improve the processes, structure, and functions existing, as of July 22, 2011, of ecosystems and habitats associated with critical areas.

(5) "Participating watershed" means a watershed identified by a county under RCW 36.70A.710(1) to participate in the program.

(6) "Priority watershed" means a geographic area nominated by the county and designated by the commission.

(7) "Program" means the voluntary stewardship program established in RCW 36.70A.705.

(8) "Protect" or "protecting" means to prevent the degradation of functions and values existing as of July 22, 2011.

(9) "Receipt of funding" means the date a county takes legislative action accepting any funds as required in RCW 36.70A.715(1) to implement the program.

(10) "Statewide advisory committee" means the statewide advisory committee created in RCW 36.70A.745.

(11) "Technical panel" means the directors or director designees of the following agencies: The department of fish

and wildlife; the department of agriculture; the department of ecology; and the commission.

(12) "Watershed" means a water resource inventory area, salmon recovery planning area, or a subbasin as determined by a county.

(13) "Watershed group" means an entity designated by a county under the provisions of RCW 36.70A.715.

(14) "Work plan" means a watershed work plan developed under the provisions of RCW 36.70A.720. [2011 c 360 § 2.]

36.70A.705 Voluntary stewardship program established—Administered by commission—Agency participation.

(1) The voluntary stewardship program is established to be administered by the commission. The program shall be designed to protect and enhance critical areas on lands used for agricultural activities through voluntary actions by agricultural operators.

(2) In administering the program, the commission must:

(a) Establish policies and procedures for implementing the program;

(b) Administer funding for counties to implement the program including, but not limited to, funding to develop strategies and incentive programs and to establish local guidelines for watershed stewardship programs;

(c) Administer the program's technical assistance funds and coordinate among state agencies and other entities for the implementation of the program;

(d) Establish a technical panel;

(e) In conjunction with the technical panel, review and evaluate: (i) Work plans submitted for approval under RCW 36.70A.720(2)(a); and (ii) reports submitted under RCW 36.70A.720(2)(b);

(f) Review and evaluate the program's success and effectiveness and make appropriate changes to policies and procedures for implementing the program, in consultation with the statewide advisory committee and other affected agencies;

(g) Designate priority watersheds based upon the recommendation of the statewide advisory committee. The commission and the statewide advisory committee may only consider watersheds nominated by counties under RCW 36.70A.710. When designating priority watersheds, the commission and the statewide advisory committee shall consider the statewide significance of the criteria listed in RCW 36.70A.710(3);

(h) Provide administrative support for the program's statewide advisory committee in its work. The administrative support must be in collaboration with the department of ecology and other agencies involved in the program;

(i) Maintain a web site about the program that includes times, locations, and agenda information for meetings of the statewide advisory committee;

(j) Report to the legislature on the general status of program implementation by December 1, 2013, and December 1, 2015;

(k) In conjunction with the statewide advisory committee, conduct a review of the program beginning in 2017 and every five years thereafter, and report its findings to the legislature by December 1st; and

(l) Report to the appropriate committees of the legislature in the format provided in RCW 43.01.036.

(3) The department shall assist counties participating in the program to develop plans and development regulations under RCW 36.70A.735(1).

(4) The commission, department, department of agriculture, department of fish and wildlife, department of ecology, and other state agencies as directed by the governor shall:

(a) Cooperate and collaborate to implement the program; and

(b) Develop materials to assist local watershed groups in development of work plans.

(5) State agencies conducting new monitoring to implement the program in a watershed must focus on the goals and benchmarks of the work plan. [2011 c 360 § 3.]

36.70A.710 Critical areas protection—Alternative to RCW 36.70A.060—County’s responsibilities—Procedures. (1)(a) As an alternative to protecting critical areas in areas used for agricultural activities through development regulations adopted under RCW 36.70A.060, the legislative authority of a county may elect to protect such critical areas through the program.

(b) In order to participate in the program, within six months after July 22, 2011, the legislative authority of a county must adopt an ordinance or resolution that:

(i) Elects to have the county participate in the program;

(ii) Identifies the watersheds that will participate in the program; and

(iii) Based on the criteria in subsection (4) of this section, nominates watersheds for consideration by the commission as state priority watersheds.

(2) Before adopting the ordinance or resolution under subsection (1) of this section, the county must (a) confer with tribes, and environmental and agricultural interests; and (b) provide notice following the public participation and notice provisions of RCW 36.70A.035 to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations.

(3) In identifying watersheds to participate in the program, a county must consider:

(a) The role of farming within the watershed, including the number and acreage of farms, the economic value of crops and livestock, and the risk of the conversion of farmland;

(b) The overall likelihood of completing a successful program in the watershed; and

(c) Existing watershed programs, including those of other jurisdictions in which the watershed has territory.

(4) In identifying priority watersheds, a county must consider the following:

(a) The role of farming within the watershed, including the number and acreage of farms, the economic value of crops and livestock, and the risk of the conversion of farmland;

(b) The importance of salmonid resources in the watershed;

(c) An evaluation of the biological diversity of wildlife species and their habitats in the geographic region including their significance and vulnerability;

(d) The presence of leadership within the watershed that is representative and inclusive of the interests in the watershed;

(e) Integration of regional watershed strategies, including the availability of a data and scientific review structure related to all types of critical areas;

(f) The presence of a local watershed group that is willing and capable of overseeing a successful program, and that has the operational structures to administer the program effectively, including professional technical assistance staff, and monitoring and adaptive management structures; and

(g) The overall likelihood of completing a successful program in the watershed.

(5) Except as otherwise provided in subsection (9) of this section, beginning with the effective date of the ordinance or resolution adopted under subsection (1) of this section, the program applies to all unincorporated property upon which agricultural activities occur within a participating watershed.

(6)(a) Except as otherwise provided in (b) of this subsection, within two years after July 22, 2011, a county must review and, if necessary, revise development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities:

(i) If the county has not elected to participate in the program, for all unincorporated areas; or

(ii) If the county has elected to participate in the program, for any watershed not participating in the program.

(b) A county that between July 1, 2003, and June 30, 2007, in accordance with RCW 36.70A.130 completed the review of its development regulations as required by RCW 36.70A.130 to protect critical areas as they specifically apply to agricultural activities is not required to review and revise its development regulations until required by RCW 36.70A.130.

(c) After the review and amendment required under (a) of this subsection, RCW 36.70A.130 applies to the subsequent review and amendment of development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities.

(7)(a) A county that has made the election under subsection (1) of this section may withdraw a participating watershed from the program by adopting an ordinance or resolution withdrawing the watershed from the program. A county may withdraw a watershed from the program at the end of three years, five years, or eight years after receipt of funding, or any time after ten years from receipt of funding.

(b) Within eighteen months after withdrawing a participating watershed from the program, the county must review and, if necessary, revise its development regulations that protect critical areas in that watershed as they specifically apply to agricultural activities. The development regulations must protect the critical area functions and values as they existed on July 22, 2011. RCW 36.70A.130 applies to the subsequent review and amendment of development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities.

(8) A county that has made the election under subsection (1) of this section is eligible for a share of the funding made available to implement the program, subject to funding availability from the state.

(9) A county that has made the election under subsection (1) of this section is not required to implement the program in a participating watershed until adequate funding for the pro-

gram in that watershed is provided to the county. [2011 c 360 § 4.]

36.70A.715 Funding by commission—County's duties—Watershed group established. (1) When the commission makes funds available to a county that has made the election provided in RCW 36.70A.710(1), the county must within sixty days:

(a) Acknowledge the receipt of funds; and

(b) Designate a watershed group and an entity to administer funds for each watershed for which funding has been provided.

(2) A county must confer with tribes and interested stakeholders before designating or establishing a watershed group.

(3) The watershed group must include broad representation of key watershed stakeholders and, at a minimum, representatives of agricultural and environmental groups and tribes that agree to participate. The county should encourage existing lead entities, watershed planning units, or other integrating organizations to serve as the watershed group.

(4) The county may designate itself, a tribe, or another entity to coordinate the local watershed group. [2011 c 360 § 5.]

36.70A.720 Watershed group's duties—Work plan—Conditional priority funding. (1) A watershed group designated by a county under RCW 36.70A.715 must develop a work plan to protect critical areas while maintaining the viability of agriculture in the watershed. The work plan must include goals and benchmarks for the protection and enhancement of critical areas. In developing and implementing the work plan, the watershed group must:

(a) Review and incorporate applicable water quality, watershed management, farmland protection, and species recovery data and plans;

(b) Seek input from tribes, agencies, and stakeholders;

(c) Develop goals for participation by agricultural operators conducting commercial and noncommercial agricultural activities in the watershed necessary to meet the protection and enhancement benchmarks of the work plan;

(d) Ensure outreach and technical assistance is provided to agricultural operators in the watershed;

(e) Create measurable benchmarks that, within ten years after the receipt of funding, are designed to result in (i) the protection of critical area functions and values and (ii) the enhancement of critical area functions and values through voluntary, incentive-based measures;

(f) Designate the entity or entities that will provide technical assistance;

(g) Work with the entity providing technical assistance to ensure that individual stewardship plans contribute to the goals and benchmarks of the work plan;

(h) Incorporate into the work plan any existing development regulations relied upon to achieve the goals and benchmarks for protection;

(i) Establish baseline monitoring for: (i) Participation activities and implementation of the voluntary stewardship plans and projects; (ii) stewardship activities; and (iii) the effects on critical areas and agriculture relevant to the protec-

tion and enhancement benchmarks developed for the watershed;

(j) Conduct periodic evaluations, institute adaptive management, and provide a written report of the status of plans and accomplishments to the county and to the commission within sixty days after the end of each biennium;

(k) Assist state agencies in their monitoring programs; and

(l) Satisfy any other reporting requirements of the program.

(2)(a) The watershed group shall develop and submit the work plan to the director for approval as provided in RCW 36.70A.725.

(b)(i) Not later than five years after the receipt of funding for a participating watershed, the watershed group must report to the director and the county on whether it has met the work plan's protection and enhancement goals and benchmarks.

(ii) If the watershed group determines the protection goals and benchmarks have been met, and the director concurs under RCW 36.70A.730, the watershed group shall continue to implement the work plan.

(iii) If the watershed group determines the protection goals and benchmarks have not been met, it must propose and submit to the director an adaptive management plan to achieve the goals and benchmarks that were not met. If the director does not approve the adaptive management plan under RCW 36.70A.730, the watershed is subject to RCW 36.70A.735.

(iv) If the watershed group determines the enhancement goals and benchmarks have not been met, the watershed group must determine what additional voluntary actions are needed to meet the benchmarks, identify the funding necessary to implement these actions, and implement these actions when funding is provided.

(c)(i) Not later than ten years after receipt of funding for a participating watershed, and every five years thereafter, the watershed group must report to the director and the county on whether it has met the protection and enhancement goals and benchmarks of the work plan.

(ii) If the watershed group determines the protection goals and benchmarks have been met, and the director concurs under RCW 36.70A.730, the watershed group shall continue to implement the work plan.

(iii) If the watershed group determines the protection goals and benchmarks have not been met, the watershed is subject to RCW 36.70A.735.

(iv) If the watershed group determines the enhancement goals and benchmarks have not been met, the watershed group must determine what additional voluntary actions are needed to meet the benchmarks, identify the funding necessary to implement these actions, and implement these actions when funding is provided.

(3) Following approval of a work plan, a county or watershed group may request a state or federal agency to focus existing enforcement authority in that participating watershed, if the action will facilitate progress toward achieving work plan protection goals and benchmarks.

(4) The commission may provide priority funding to any watershed designated under the provisions of RCW 36.70A.705(2)(g). The director, in consultation with the

statewide advisory committee, shall work with the watershed group to develop an accelerated implementation schedule for watersheds that receive priority funding.

(5) Commercial and noncommercial agricultural operators participating in the program are eligible to receive funding and assistance under watershed programs. [2011 c 360 § 6.]

36.70A.725 Technical review of work plan—Time frame for action by director. (1) Upon receipt of a work plan submitted to the director under RCW 36.70A.720(2)(a), the director must submit the work plan to the technical panel for review.

(2) The technical panel shall review the work plan and report to the director within forty-five days after the director receives the work plan. The technical panel shall assess whether at the end of ten years after receipt of funding, the work plan, in conjunction with other existing plans and regulations, will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed.

(3)(a) If the technical panel determines the proposed work plan will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed:

- (i) It must recommend approval of the work plan; and
- (ii) The director must approve the work plan.

(b) If the technical panel determines the proposed work plan will not protect critical areas while maintaining and enhancing the viability of agriculture in the watershed:

- (i) It must identify the reasons for its determination; and
- (ii) The director must advise the watershed group of the reasons for disapproval.

(4) The watershed group may modify and resubmit its work plan for review and approval consistent with this section.

(5) If the director does not approve a work plan submitted under this section within two years and nine months after receipt of funding, the director shall submit the work plan to the statewide advisory committee for resolution. If the statewide advisory committee recommends approval, the director must approve the work plan.

(6) If the director does not approve a work plan for a watershed within three years after receipt of funding, the provisions of RCW 36.70A.735(2) apply to the watershed. [2011 c 360 § 7.]

36.70A.730 Report by watershed group—Director consults with statewide advisory committee. (1) Upon receipt of a report by a watershed group under RCW 36.70A.720(2)(b) that the work plan goals and benchmarks have been met, the director must consult with the statewide advisory committee. If the director concurs with the watershed group report, the watershed group shall continue to implement the work plan. If the director does not concur with the watershed group report, the director shall consult with the statewide advisory committee following the procedures in subsection (2) of this section.

(2) If either the director, following receipt of a report under subsection (1) of this section, or the watershed group, in the report submitted to the director under RCW 36.70A.720(2)(b), concludes that the work plan goals and

benchmarks for protection have not been met, the director must consult with the statewide advisory committee for a recommendation on how to proceed. If the director, acting upon recommendation from the statewide advisory committee, determines that the watershed is likely to meet the goals and benchmarks with an additional six months of planning and implementation time, the director must grant an extension. If the director, acting upon a recommendation from the statewide advisory committee, determines that the watershed is unlikely to meet the goals and benchmarks within six months, the watershed is subject to RCW 36.70A.735.

(3) A watershed that fails to meet its goals and benchmarks for protection within the six-month time extension under subsection (2) of this section is subject to RCW 36.70A.735. [2011 c 360 § 8.]

36.70A.735 When work plan is not approved, fails, or is unfunded—County's duties—Rules. (1) Within eighteen months after one of the events in subsection (2) of this section, a county must:

(a) Develop, adopt, and implement a watershed work plan approved by the department that protects critical areas in areas used for agricultural activities while maintaining the viability of agriculture in the watershed. The department shall consult with the departments of agriculture, ecology, and fish and wildlife and the commission, and other relevant state agencies before approving or disapproving the proposed work plan. The appeal of the department's decision under this subsection is subject to appeal under RCW 36.70A.280;

(b) Adopt development regulations previously adopted under this chapter by another local government for the purpose of protecting critical areas in areas used for agricultural activities. Regulations adopted under this subsection (1)(b) must be from a region with similar agricultural activities, geography, and geology and must: (i) Be from Clallam, Clark, King, or Whatcom counties; or (ii) have been upheld by a growth management hearings board or court after July 1, 2011, where the board or court determined that the provisions adequately protected critical areas functions and values in areas used for agricultural activities;

(c) Adopt development regulations certified by the department as protective of critical areas in areas used for agricultural activities as required by this chapter. The county may submit existing or amended regulations for certification. The department must make its decision on whether to certify the development regulations within ninety days after the county submits its request. If the department denies the certification, the county shall take an action under (a), (b), or (d) of this subsection. The department must consult with the departments of agriculture, ecology, and fish and wildlife and the commission before making a certification under this section. The appeal of the department's decision under this subsection (1)(c) is subject to appeal under RCW 36.70A.280; or

(d) Review and, if necessary, revise development regulations adopted under this chapter to protect critical areas as they relate to agricultural activities.

(2) A participating watershed is subject to this section if:

(a) The work plan is not approved by the director as provided in RCW 36.70A.725;

(b) The work plan's goals and benchmarks for protection have not been met as provided in RCW 36.70A.720;

(c) The commission has determined under RCW 36.70A.740 that the county, department, commission, or departments of agriculture, ecology, or fish and wildlife have not received adequate funding to implement a program in the watershed; or

(d) The commission has determined under RCW 36.70A.740 that the watershed has not received adequate funding to implement the program.

(3) The department shall adopt rules to implement subsection (1)(a) and (c) of this section. [2011 c 360 § 9.]

36.70A.740 Commission's duties—Timelines. (1) By July 31, 2015, the commission must:

(a) In consultation with each county that has elected under RCW 36.70A.710 to participate in the program, determine which participating watersheds received adequate funding to establish and implement the program in a participating watershed by July 1, 2015; and

(b) In consultation with other state agencies, for each participating watershed determine whether state agencies required to take action under the provisions of RCW 36.70A.700 through 36.70A.760 have received adequate funding to support the program by July 1, 2015.

(2) By July 31, 2017, and every two years thereafter, in consultation with each county that has elected under RCW 36.70A.710 to participate in the program and other state agencies, the commission shall determine for each participating watershed whether adequate funding to implement the program was provided during the preceding biennium as provided in subsection (1) of this section.

(3) If the commission determines under subsection (1) or (2) of this section that a participating watershed has not received adequate funding, the watershed is subject to the provisions of RCW 36.70A.735.

(4) In consultation with the statewide advisory committee and other state agencies, not later than August 31, 2015, and each August 31st every two years thereafter, the commission shall report to the legislature and each county that has elected under RCW 36.70A.710 to participate in the program on the participating watersheds that have received adequate funding to establish and implement the program. [2011 c 360 § 10.]

36.70A.745 Statewide advisory committee—Membership. (1)(a) From the nominations made under (b) of this subsection, the commission shall appoint a statewide advisory committee, consisting of: Two persons representing county government, two persons representing agricultural organizations, and two persons representing environmental organizations. The commission, in conjunction with the governor's office, shall also invite participation by two representatives of tribal governments.

(b) Organizations representing county, agricultural, and environmental organizations shall submit nominations of their representatives to the commission within ninety days of July 22, 2011. Members of the statewide advisory committee shall serve two-year terms except that for the first year, one representative from each of the sectors shall be appointed to the statewide advisory committee for a term of one year. Members may be reappointed by the commission for addi-

tional two-year terms and replacement members shall be appointed in accordance with the process for selection of the initial members of the statewide advisory committee.

(c) Upon notification of the commission by an appointed member, the appointed member may designate a person to serve as an alternate.

(d) The executive director of the commission shall serve as a nonvoting chair of the statewide advisory committee.

(e) Members of the statewide advisory committee shall serve without compensation and, unless serving as a state officer or employee, are not eligible for reimbursement for subsistence, lodging, and travel expenses under RCW 43.03.050 and 43.03.060.

(2) The role of the statewide advisory committee is to advise the commission and other agencies involved in development and operation of the program. [2011 c 360 § 11.]

36.70A.750 Agricultural operators—Individual stewardship plan. (1) Agricultural operators implementing an individual stewardship plan consistent with a work plan are presumed to be working toward the protection and enhancement of critical areas.

(2) If the watershed group determines that additional or different practices are needed to achieve the work plan's goals and benchmarks, the agricultural operator may not be required to implement those practices but may choose to implement the revised practices on a voluntary basis and is eligible for funding to revise the practices. [2011 c 360 § 12.]

36.70A.755 Implementing the work plan. In developing stewardship practices to implement the work plan, to the maximum extent practical the watershed group should:

(1) Avoid management practices that may have unintended adverse consequences for other habitats, species, and critical areas functions and values; and

(2) Administer the program in a manner that allows participants to be eligible for public or private environmental protection and enhancement incentives while protecting and enhancing critical area functions and values. [2011 c 360 § 13.]

36.70A.760 Agricultural operators—Withdrawal from program. An agricultural operator participating in the program may withdraw from the program and is not required to continue voluntary measures after the expiration of an applicable contract. The watershed group must account for any loss of protection resulting from withdrawals when establishing goals and benchmarks for protection and a work plan under RCW 36.70A.720. [2011 c 360 § 14.]

36.70A.904 Conflict with federal requirements—2011 c 360. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that

are a necessary condition to the receipt of federal funds by the state. [2011 c 360 § 21.]

Chapter 36.83 RCW

ROADS AND BRIDGES—SERVICE DISTRICTS

Sections

36.83.110 Election to retain commissioners—Referendum petition.

36.83.110 Election to retain commissioners—Referendum petition. Any registered voter residing within the boundaries of the road and bridge service district may file a referendum petition to call an election to retain any or all commissioners. Any referendum petition to call such election shall be filed with the county auditor no later than one year before the end of a commissioner's term. Within ten days of the filing of a petition, the county auditor shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question: "Shall (name of commissioner) be retained as a road and bridge service district commissioner?" and the question shall be posed separately for each commissioner. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than twenty-five percent of the registered voters residing within the boundaries of the service district and file the signed petitions with the county auditor. Each petition form shall contain the ballot title. The county auditor shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the county auditor shall submit the referendum measure to the registered voters residing in the service district in a special election no later than one hundred twenty days after the signed petition has been filed with the county auditor.

The office of any commissioner for whom there is not a majority vote to retain shall be declared vacant. [2011 c 10 § 79; 1996 c 292 § 4.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Chapter 36.93 RCW

LOCAL GOVERNMENTAL ORGANIZATION—BOUNDARIES—REVIEW BOARDS

Sections

36.93.030 Creation of boundary review boards in counties with populations of two hundred ten thousand or more—Creation in other counties.

36.93.051 Appointment of board—Members—Terms—Qualifications.

36.93.030 Creation of boundary review boards in counties with populations of two hundred ten thousand or more—Creation in other counties. (1) There is hereby created and established in each county with a population of two hundred ten thousand or more a board to be known and designated as a "boundary review board".

(2) A boundary review board may be created and established in any other county in the following manner:

(a) The county legislative authority may, by majority vote, adopt a resolution establishing a boundary review board; or

(b) A petition seeking establishment of a boundary review board signed by qualified electors residing in the county equal in number to at least five percent of the votes cast in the county at the last county general election may be filed with the county auditor.

Upon the filing of such a petition, the county auditor shall examine the same and certify to the sufficiency of the signatures thereon. No person may withdraw his or her name from a petition after it has been filed with the auditor. Within thirty days after the filing of such petition, the county auditor shall transmit the same to the county legislative authority, together with his or her certificate of sufficiency.

After receipt of a valid petition for the establishment of a boundary review board, the county legislative authority shall submit the question of whether a boundary review board should be established to the electorate at the next primary or general election according to RCW 29A.04.321. Notice of the election shall be given as provided in RCW 29A.52.355 and shall include a clear statement of the proposal to be submitted.

If a majority of the persons voting on the proposition shall vote in favor of the establishment of the boundary review board, such board shall thereupon be deemed established. [2011 c 10 § 80; 2006 c 344 § 28; 1991 c 363 § 91; 1969 ex.s. c 111 § 1; 1967 c 189 § 3.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

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

36.93.051 Appointment of board—Members—Terms—Qualifications. The boundary review board in each county with a population of one million or more shall consist of eleven members chosen as follows:

(1) Four persons shall be appointed by the county appointing authority;

(2) Four persons shall be appointed by the mayors of the cities and towns located within the county; and

(3) Three persons shall be appointed by the board from nominees of special districts in the county.

The governor shall designate one initial appointee to serve a term of two years, and two initial appointees to serve terms of four years, if the appointments are made in an odd-numbered year, or one initial appointee to serve a term of one year, and two initial appointees to serve terms of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The county appointing authority shall designate one of its initial appointees to serve a term of two years, and two of its initial appointees to serve terms of four years, if the appointments are made in an odd-numbered year, or one of its initial appointees to serve a term of one year, and two of its initial appointees to serve terms of three years, if the appointments are made in an even-numbered year, with the length of

the term being calculated from the first day of February in the year the appointment was made.

The mayors making the initial city and town appointments shall designate two of their initial appointees to serve terms of two years, and one of their initial appointees to serve a term of four years, if the appointments are made in an odd-numbered year, or two of their initial appointees to serve terms of one year, and one of their initial appointees to serve a term of three years, if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of February in the year the appointment was made.

The board shall make two initial appointments from the nominees of special districts, with one appointee serving a term of four years and one initial appointee serving a term of two years, if the appointments are made in an odd-numbered year, or one initial appointee serving a term of three years and one initial appointee serving a term of one year if the appointments are made in an even-numbered year, with the length of the term being calculated from the first day of March in the year in which the appointment is made.

After the initial appointments, all appointees shall serve four-year terms.

No appointee may be an official or employee of the county or a governmental unit in the county, or a consultant or advisor on a contractual or regular retained basis of the county, any governmental unit in the county, or any agency or association thereof. [2011 1st sp.s. c 21 § 23; 1991 c 363 § 93; 1989 c 84 § 17.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

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

Chapter 36.94 RCW

SEWERAGE, WATER, AND DRAINAGE SYSTEMS

Sections

36.94.110 Adherence to plan—Procedure for amendment. (*Effective July 1, 2012.*)

36.94.110 Adherence to plan—Procedure for amendment. (*Effective July 1, 2012.*) After adoption of the sewerage and/or water general plan, all municipal corporations and private utilities within the plan area shall abide by and adhere to the plan for the future development of their systems. A municipal corporation or private utility, including a wastewater company as defined in RCW 80.04.010, may petition for amendments to the plan. Whenever the governing authority of any county or counties or any municipal corporation deems it to be for the public interest to amend the sewerage and/or water general plan for such county or counties, notice must be filed with the board or boards of county commissioners. Upon such notice, the board or boards shall initiate consideration of any amendment requested relating to the plan and proceed as provided in this chapter for the adoption of an original plan. [2011 c 214 § 28; 1967 c 72 § 11.]

Findings—Purpose—Limitation of chapter—Effective date—2011 c 214: See notes following RCW 80.04.010.

[2011 RCW Supp—page 700]

Chapter 36.100 RCW

PUBLIC FACILITIES DISTRICTS

Sections

36.100.220 Tax on vehicle parking charges.

36.100.220 Tax on vehicle parking charges. (1) A public facility district may levy and fix a tax on any vehicle parking charges imposed at any parking facility that is owned or leased by the public facility district as part of a regional center, as defined in RCW 35.57.020, or a baseball stadium, as defined in RCW 82.14.0485. No county, city, or town within which the regional center or baseball stadium is located may impose a tax of the same or similar kind on any vehicle parking charges at the facility.

(2) For the purposes of this section, "vehicle parking charges" means only the actual parking charges exclusive of taxes and service charges and the value of any other benefit conferred.

(3) The tax authorized under this section must be at the rate of not more than ten percent. The tax authorized by this section with respect to a parking facility associated with a baseball stadium must be used exclusively to fund repair, reequipping, and capital improvement of the baseball stadium, and is not subject to the requirements of RCW 36.100.010(4). [2011 1st sp.s. c 38 § 3; 1999 c 165 § 18.]

Additional notes found at www.leg.wa.gov

Title 37

FEDERAL AREAS—INDIANS

Chapters

37.12 Indians and Indian lands—Jurisdiction.

37.16 Acquisition of lands for permanent military installations.

Chapter 37.12 RCW

INDIANS AND INDIAN LANDS—JURISDICTION

Sections

37.12.021 Assumption of criminal and civil jurisdiction by state—Resolution of request—Proclamation by governor, 1963 act.

37.12.021 Assumption of criminal and civil jurisdiction by state—Resolution of request—Proclamation by governor, 1963 act. Whenever the governor of this state shall receive from the majority of any tribe or the tribal council or other governing body, duly recognized by the Bureau of Indian Affairs, of any Indian tribe, community, band, or group in this state a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction of the state of Washington to the full extent authorized by federal law, he or she shall issue within sixty days a proclamation to the effect that such jurisdiction shall apply to all Indians and all Indian territory, reservations, country, and lands of the Indian body involved to the same extent that this state exercises civil and criminal jurisdiction or both elsewhere within the state: PROVIDED, That jurisdiction assumed pursuant to this section shall nevertheless be subject

to the limitations set forth in RCW 37.12.060. [2011 c 336 § 765; 1963 c 36 § 5.]

Chapter 37.16 RCW

ACQUISITION OF LANDS FOR PERMANENT MILITARY INSTALLATIONS

Sections

37.16.180 Jurisdiction ceded.

37.16.180 Jurisdiction ceded. Pursuant to the Constitution and laws of the United States, and especially to paragraph seventeen of section eight of article one of such Constitution, the consent of the legislature of the state of Washington is hereby given to the United States to acquire by donation from any county acting under the provisions of this chapter, title to all the lands herein intended to be referred to, to be evidenced by the deed or deeds of such county, signed by the chair of its board of county commissioners and attested by the clerk of such board under the seal of such board, and the consent of the state of Washington is hereby given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever, over such tracts or parcels of land so conveyed to it: PROVIDED, Upon such conveyance being concluded, a sufficient description by metes and bounds and an accurate plat or map of each such tract or parcel of land be filed in the auditor's office of the county in which such lands are situated, together with copies of the orders, deeds, patents, or other evidences in writing of the title of the United States: AND PROVIDED, That all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime in cases arising outside of such reservation, may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made. [2011 c 336 § 766; 1917 c 4 § 22; no RRS. Formerly RCW 37.08.180.]

General cession of jurisdiction: Chapter 37.04 RCW.

Jurisdiction in special cases: Chapter 37.08 RCW.

Title 38

MILITIA AND MILITARY AFFAIRS

Chapters

- 38.24** Claims and compensation.
- 38.32** Offenses—Punishment.
- 38.38** Washington code of military justice.
- 38.52** Emergency management.
- 38.56** Intrastate mutual aid system.

Chapter 38.24 RCW

CLAIMS AND COMPENSATION

Sections

38.24.050 Pay of officers and enlisted personnel.

38.24.050 Pay of officers and enlisted personnel. Commissioned officers, warrant officers, and enlisted personnel of the organized militia of Washington, while in active

state service or inactive duty, are entitled to and shall receive the same amount of pay and allowances from the state of Washington as provided by federal laws and regulations for commissioned officers, warrant officers, and enlisted personnel of the United States army only if federal pay and allowances are not authorized. For periods of such active state service, commissioned officers, warrant officers, and enlisted personnel of the organized militia of Washington shall receive either such pay and allowances or an amount equal to one and one-half of the federal minimum wage, whichever is greater.

The value of articles issued to any member and not returned in good order on demand, and legal fines or forfeitures, may be deducted from the member's pay.

If federal pay and allowances are not authorized, all members detailed to serve on any board or commission ordered by the governor, or on any court-martial ordered by proper authority, may, at the discretion of the adjutant general, be paid a sum equal to one day's active state service for each day actually employed on the board or court or engaged in the business thereof, or in traveling to and from the same; and in addition thereto travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended when such duty is at a place other than the city or town of his or her residence.

Necessary transportation, quartermasters' stores, and subsistence for troops when ordered on active state service may be contracted for and paid for as are other military bills. [2011 c 336 § 767; 1989 c 19 § 37; 1984 c 198 § 3; 1975-'76 2nd ex.s. c 34 § 81; 1974 ex.s. c 46 § 1; 1943 c 130 § 43; Rem. Supp. 1943 § 8603-43. Prior: 1925 c 28 § 2, part; 1919 c 137 § 1, part; 1917 c 107 § 37, part; 1915 c 47 § 1, part; 1913 c 66 § 10, part; 1909 c 134 § 157, part; 1907 c 122 § 5, part; 1903 c 155 § 13, part; 1901 c 78 § 11, part; 1895 c 108 § 89, part.]

Additional notes found at www.leg.wa.gov

Chapter 38.32 RCW

OFFENSES—PUNISHMENT

Sections

38.32.030 Exemptions while on duty.

38.32.030 Exemptions while on duty. No person belonging to the military forces of this state shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from any place at which he or she may be required to attend military duty. Any members of the organized militia parading, or performing any duty according to the law shall have the right-of-way in any street or highway through which they may pass and while on field duty shall have the right to enter upon, cross, or occupy any uninclosed lands, or any inclosed lands where no damage will be caused thereby: PROVIDED, That the carriage of the United States mail and legitimate functions of the police and fire departments shall not be interfered with thereby. [2011 c 336 § 768; 1943 c 130 § 45; Rem. Supp. 1943 § 8603-45. Prior: 1917 c 107 § 40; 1909 c 134 § 66; 1895 c 108 § 103.]

Chapter 38.38 RCW

WASHINGTON CODE OF MILITARY JUSTICE

Sections

38.38.328	[Art. 35] Service of charges.
38.38.548	[Art. 63] Rehearings.
38.38.552	[Art. 64] Approval by the convening authority.
38.38.556	[Art. 65] Review of records—Disposition.
38.38.580	[Art. 71] Restoration.
38.38.628	[Art. 77] Principals.
38.38.632	[Art. 78] Accessory after the fact.
38.38.648	[Art. 82] Solicitation.
38.38.664	[Art. 86] Absence without leave.
38.38.668	[Art. 87] Missing movement.
38.38.676	[Art. 89] Disrespect towards superior commissioned officer.
38.38.680	[Art. 90] Assaulting or willfully disobeying superior commissioned officer.
38.38.692	[Art. 93] Cruelty and maltreatment.
38.38.696	[Art. 94] Mutiny or sedition.
38.38.704	[Art. 96] Releasing prisoner without proper authority.
38.38.724	[Art. 101] Improper use of countersign.
38.38.732	[Art. 103] Captured or abandoned property.
38.38.740	[Art. 105] Misconduct of a prisoner.
38.38.764	[Art. 112] Drunk on duty—Sleeping on post—Leaving post before relief.
38.38.880	[Art. 145] Delegation of authority by the governor.

38.38.328 [Art. 35] Service of charges. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his or her objection, be brought to trial or be required to participate by himself or herself or counsel in a session called by a military judge under RCW 38.38.380(1), in a general court-martial within a period of five days after the service of the charges upon him or her, or before a special court-martial within a period of three days after the service of the charges upon him or her. [2011 c 336 § 769; 1989 c 48 § 34; 1963 c 220 § 37.]

38.38.548 [Art. 63] Rehearings. (1) If the convening authority disapproves the findings and sentence of a court martial he or she may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he or she shall state the reasons for disapproval. If he or she disapproves the findings and sentence and does not order a rehearing, he or she shall dismiss the charges.

(2) Each rehearing shall take place before a court martial composed of members not members of the court martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he or she was found not guilty by the first court martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. [2011 c 336 § 770; 1963 c 220 § 65.]

38.38.552 [Art. 64] Approval by the convening authority. In acting on the findings and sentence of a court martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he or she finds correct in law and fact and as he or she in his or her discretion determines should be approved. Unless he or she indicates otherwise, approval of the sentence

is approval of the findings and sentence. [2011 c 336 § 771; 1963 c 220 § 66.]

38.38.556 [Art. 65] Review of records—Disposition. (1) If the convening authority is the governor, the governor's action on the review of any record of trial is final.

(2) In all other cases not covered by subsection (1) of this section, if the sentence of a special court-martial as approved by the convening authority includes a dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the staff judge advocate shall then be sent to the state judge advocate for review.

(3) All other special and summary court-martial records shall be sent to the judge advocate of the appropriate force of the organized militia and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations of the governor.

(4) The state judge advocate shall review the record of trial in each case sent for review as provided under subsection (2) of this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the state judge advocate is limited to questions of jurisdiction.

(5) The state judge advocate shall take final action in any case reviewable by the state judge advocate.

(6) In a case reviewable by the state judge advocate under this section, the state judge advocate may act only with respect to the findings and sentence as approved by the convening authority. The state judge advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the state judge advocate finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the state judge advocate may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the state judge advocate sets aside the findings and sentence, the state judge advocate may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the state judge advocate sets aside the findings and sentence and does not order a rehearing, he or she shall order that the charges be dismissed.

(7) In a case reviewable by the state judge advocate under this section, the state judge advocate shall instruct the convening authority to act in accordance with the state judge advocate's decision on the review. If the state judge advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, the state judge advocate may dismiss the charges.

(8) The state judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the organized militia, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by special court-martial, including a sentence to a dishonorable discharge, referred to it by the state judge advocate. Boards of review have the same authority on review as the state

judge advocate has under this section. [2011 c 336 § 772; 1989 c 48 § 56; 1963 c 220 § 67.]

38.38.580 [Art. 71] Restoration. (1) Under such regulations as the governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or rehearing.

(2) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his or her enlistment.

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had he or she not been dismissed. The reappointment of such a former officer may be made if a position vacancy is available under applicable tables of organization. All time between the dismissal and reappointment shall be considered as service for all purposes. [2011 c 336 § 773; 1989 c 48 § 60; 1963 c 220 § 73.]

38.38.628 [Art. 77] Principals. Any person subject to this code who:

(1) Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

(2) Causes an act to be done which if directly performed by him or her would be punishable by this code; is a principal. [2011 c 336 § 774; 1963 c 220 § 76.]

38.38.632 [Art. 78] Accessory after the fact. Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his or her apprehension, trial, or punishment shall be punished as a court martial may direct. [2011 c 336 § 775; 1963 c 220 § 77.]

38.38.648 [Art. 82] Solicitation. (1) Any person subject to this code who solicits or advises another or others to desert in violation of RCW 38.38.660 or mutiny in violation of RCW 38.38.696 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he or she shall be punished as a court martial may direct.

(2) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of RCW 38.38.716 or sedition in violation of RCW 38.38.696 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he or she shall be pun-

ished as a court martial may direct. [2011 c 336 § 776; 1963 c 220 § 81.]

38.38.664 [Art. 86] Absence without leave. Any person subject to this code who, without authority:

(1) Fails to go to his or her appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or herself or remains absent from his or her unit, organization, or place of duty at which he or she is required to be at the time prescribed;

shall be punished as a court martial may direct. [2011 c 336 § 777; 1963 c 220 § 85.]

38.38.668 [Art. 87] Missing movement. Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he or she is required in the course of duty to move shall be punished as a court martial may direct. [2011 c 336 § 778; 1963 c 220 § 86.]

38.38.676 [Art. 89] Disrespect towards superior commissioned officer. Any person subject to this code who behaves with disrespect towards his or her superior commissioned officer shall be punished as a court martial may direct. [2011 c 336 § 779; 1963 c 220 § 88.]

38.38.680 [Art. 90] Assaulting or willfully disobeying superior commissioned officer. Any person subject to this code who:

(1) Strikes his or her superior commissioned officer or draws or lifts up any weapon or offers any violence against him or her while he or she is in the execution of his or her office; or

(2) Willfully disobeys a lawful command of his or her superior commissioned officer; shall be punished as a court martial may direct. [2011 c 336 § 780; 1963 c 220 § 89.]

38.38.692 [Art. 93] Cruelty and maltreatment. Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his or her orders shall be punished as a court martial may direct. [2011 c 336 § 781; 1963 c 220 § 92.]

38.38.696 [Art. 94] Mutiny or sedition. (1) Any person subject to this code who:

(a) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his or her duty or creates any violence or disturbance is guilty of mutiny;

(b) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(c) Fails to do his or her utmost to prevent and suppress a mutiny or sedition being committed in his or her presence, or fails to take all reasonable means to inform his or her superior commissioned officer or commanding officer of a mutiny or sedition which he or she knows or has reason to believe is

taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(2) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court martial may direct. [2011 c 336 § 782; 1963 c 220 § 93.]

38.38.704 [Art. 96] Releasing prisoner without proper authority. Any person subject to this code who, without proper authority, releases any prisoner committed to his or her charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court martial may direct, whether or not the prisoner was committed in strict compliance with law. [2011 c 336 § 783; 1963 c 220 § 95.]

38.38.724 [Art. 101] Improper use of countersign. Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his or her knowledge, he or she was authorized and required to give, shall be punished as a court martial may direct. [2011 c 336 § 784; 1963 c 220 § 100.]

38.38.732 [Art. 103] Captured or abandoned property. (1) All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(2) Any person subject to this code who:

(a) Fails to carry out the duties prescribed in subsection (1) of this section;

(b) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he or she receives or expects any profit, benefit, or advantage to himself or herself or another directly or indirectly connected with himself or herself; or

(c) Engages in looting or pillaging;

shall be punished as a court martial may direct. [2011 c 336 § 785; 1963 c 220 § 102.]

38.38.740 [Art. 105] Misconduct of a prisoner. Any person subject to this code who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his or her captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court martial may direct. [2011 c 336 § 786; 1963 c 220 § 104.]

38.38.764 [Art. 112] Drunk on duty—Sleeping on post—Leaving post before relief. Any person subject to this code who is found drunk on duty or sleeping upon his or her post, or who leaves his or her post before he or she is reg-

[2011 RCW Supp—page 704]

ularly relieved, shall be punished as a court martial may direct. [2011 c 336 § 787; 1963 c 220 § 110.]

38.38.880 [Art. 145] Delegation of authority by the governor. The governor may delegate any authority vested in him or her under this code, and may provide for the subdelegation of any such authority, except the power given him or her by RCW 38.38.192 and 38.38.240. [2011 c 336 § 788; 1963 c 220 § 130.]

Chapter 38.52 RCW

EMERGENCY MANAGEMENT

Sections

38.52.040	Emergency management council—Members—Ad hoc committees—Function as state emergency response commission—Rules review—Intrastate mutual aid committee.
38.52.140	Status of civil service employee preserved.
38.52.180	Liability for property damage, bodily injury, death—Immunity—Assumption by state—Indemnification—Immunity from liability for covered volunteers.
38.52.190	Compensation for injury or death—Chapter exclusive.
38.52.195	Exemption from liability while providing construction, equipment, or work.
38.52.200	Liability for compensation is in lieu of other liability—Exception.
38.52.220	Compensation boards—Meetings—Claims not necessitating board meeting.
38.52.230	Compensation boards—Attendance of witnesses, oaths, rules—Members uncompensated.
38.52.260	When compensation furnished.
38.52.350	Benefits furnished under federal law—Reduction of state benefits.
38.52.380	State compensation denied if payment prevents federal benefits.
38.52.400	Search and rescue activities—Powers and duties of local officials.
38.52.920	Repeal and saving.

38.52.040 Emergency management council—Members—Ad hoc committees—Function as state emergency response commission—Rules review—Intrastate mutual aid committee. (1) There is hereby created the emergency management council (hereinafter called the council), to consist of not more than seventeen members who shall be appointed by the adjutant general. The membership of the council shall include, but not be limited to, representatives of city and county governments, sheriffs and police chiefs, the Washington state patrol, the military department, the department of ecology, state and local fire chiefs, seismic safety experts, state and local emergency management directors, search and rescue volunteers, medical professions who have expertise in emergency medical care, building officials, and private industry. The representatives of private industry shall include persons knowledgeable in emergency and hazardous materials management. The councilmembers shall elect a chair from within the council membership. The members of the council shall serve without compensation, but may be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The emergency management council shall advise the governor and the director on all matters pertaining to state and local emergency management. The council may appoint such ad hoc committees, subcommittees, and working groups as are required to develop specific recommendations for the

improvement of emergency management practices, standards, policies, or procedures. The council shall ensure that the governor receives an annual assessment of statewide emergency preparedness including, but not limited to, specific progress on hazard mitigation and reduction efforts, implementation of seismic safety improvements, reduction of flood hazards, and coordination of hazardous materials planning and response activities. The council or a subcommittee thereof shall periodically convene in special session and serve during those sessions as the state emergency response commission required by P.L. 99-499, the emergency planning and community right-to-know act. When sitting in session as the state emergency response commission, the council shall confine its deliberations to those items specified in federal statutes and state administrative rules governing the coordination of hazardous materials policy. The council shall review administrative rules governing state and local emergency management practices and recommend necessary revisions to the director.

(3)(a) The intrastate mutual aid committee is created and is a subcommittee of the emergency management council. The intrastate mutual aid committee consists of not more than five members who must be appointed by the council chair from council membership. The chair of the intrastate mutual aid committee is the military department representative appointed as a member of the council. Meetings of the intrastate mutual aid committee must be held at least annually.

(b) In support of the intrastate mutual aid system established in chapter 38.56 RCW, the intrastate mutual aid committee shall develop and update guidelines and procedures to facilitate implementation of the intrastate mutual aid system by member jurisdictions, including but not limited to the following: Projected or anticipated costs; checklists and forms for requesting and providing assistance; recordkeeping; reimbursement procedures; and other implementation issues. These guidelines and procedures are not subject to the rule-making requirements of chapter 34.05 RCW. [2011 1st sp.s. c 21 § 27, 2011 c 336 § 789; 2011 c 79 § 9; 1995 c 269 § 1202; 1988 c 81 § 18; 1984 c 38 § 5; 1979 ex.s. c 57 § 8; 1975-'76 2nd ex.s. c 34 § 82; 1974 ex.s. c 171 § 6; 1951 c 178 § 5.]

Reviser's note: This section was amended by 2011 c 79 § 9, 2011 c 336 § 789, and by 2011 1st sp.s. c 21 § 27, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Additional notes found at www.leg.wa.gov

38.52.140 Status of civil service employee preserved.

Any civil service employee of the state of Washington or of any political subdivision thereof while on leave of absence and on duty with any emergency management agency authorized under the provisions of this chapter shall be preserved in his or her civil service status as to seniority and retirement rights so long as he or she regularly continues to make the usual contributions incident to the retention of such beneficial rights as if he or she were not on leave of absence. [2011 c 336 § 790; 1984 c 38 § 13; 1974 ex.s. c 171 § 16; 1951 c 178 § 16.]

38.52.180 Liability for property damage, bodily injury, death—Immunity—Assumption by state—Indemnification—Immunity from liability for covered volunteers. (1) There shall be no liability on the part of anyone including any person, partnership, corporation, the state of Washington or any political subdivision thereof who owns or maintains any building or premises which have been designated by a local organization for emergency management as a shelter from destructive operations or attacks by enemies of the United States for any injuries sustained by any person while in or upon said building or premises, as a result of the condition of said building or premises or as a result of any act or omission, or in any way arising from the designation of such premises as a shelter, when such person has entered or gone upon or into said building or premises for the purpose of seeking refuge therein during destructive operations or attacks by enemies of the United States or during tests ordered by lawful authority, except for an act of willful negligence by such owner or occupant or his or her servants, agents, or employees.

(2) All legal liability for damage to property or injury or death to persons (except an emergency worker, regularly enrolled and acting as such), caused by acts done or attempted during or while traveling to or from an emergency or disaster, search and rescue, or training or exercise authorized by the department in preparation for an emergency or disaster or search and rescue, under the color of this chapter in a bona fide attempt to comply therewith, except as provided in subsections (3), (4), and (5) of this section regarding covered volunteer emergency workers, shall be the obligation of the state of Washington. Suits may be instituted and maintained against the state for the enforcement of such liability, or for the indemnification of persons appointed and regularly enrolled as emergency workers while actually engaged in emergency management duties, or as members of any agency of the state or political subdivision thereof engaged in emergency management activity, or their dependents, for damage done to their private property, or for any judgment against them for acts done in good faith in compliance with this chapter: PROVIDED, That the foregoing shall not be construed to result in indemnification in any case of willful misconduct, gross negligence, or bad faith on the part of any agent of emergency management: PROVIDED, That should the United States or any agency thereof, in accordance with any federal statute, rule, or regulation, provide for the payment of damages to property and/or for death or injury as provided for in this section, then and in that event there shall be no liability or obligation whatsoever upon the part of the state of Washington for any such damage, death, or injury for which the United States government assumes liability.

(3) No act or omission by a covered volunteer emergency worker while engaged in a covered activity shall impose any liability for civil damages resulting from such an act or omission upon:

- (a) The covered volunteer emergency worker;
- (b) The supervisor or supervisors of the covered volunteer emergency worker;
- (c) Any facility or their officers or employees;
- (d) The employer of the covered volunteer emergency worker;

(e) The owner of the property or vehicle where the act or omission may have occurred during the covered activity;

(f) Any local organization that registered the covered volunteer emergency worker; and

(g) The state or any state or local governmental entity.

(4) The immunity in subsection (3) of this section applies only when the covered volunteer emergency worker was engaged in a covered activity:

(a) Within the scope of his or her assigned duties;

(b) Under the direction of a local emergency management organization or the department, or a local law enforcement agency for search and rescue; and

(c) The act or omission does not constitute gross negligence or willful or wanton misconduct.

(5) For purposes of this section:

(a) "Covered volunteer emergency worker" means an emergency worker as defined in RCW 38.52.010 who (i) is not receiving or expecting compensation as an emergency worker from the state or local government, or (ii) is not a state or local government employee unless on leave without pay status.

(b) "Covered activity" means:

(i) Providing assistance or transportation authorized by the department during an emergency or disaster or search and rescue as defined in RCW 38.52.010, whether such assistance or transportation is provided at the scene of the emergency or disaster or search and rescue, at an alternative care site, at a hospital, or while in route to or from such sites or between sites; or

(ii) Participating in training or exercise authorized by the department in preparation for an emergency or disaster or search and rescue.

(6) Any requirement for a license to practice any professional, mechanical, or other skill shall not apply to any authorized emergency worker who shall, in the course of performing his or her duties as such, practice such professional, mechanical, or other skill during an emergency described in this chapter.

(7) The provisions of this section shall not affect the right of any person to receive benefits to which he or she would otherwise be entitled under this chapter, or under the workers' compensation law, or under any pension or retirement law, nor the right of any such person to receive any benefits or compensation under any act of congress. [2011 c 336 § 791; 2007 c 292 § 2; 1987 c 185 § 7; 1984 c 38 § 17; 1974 ex.s. c 171 § 20; 1971 ex.s. c 8 § 2; 1953 c 145 § 1; 1951 c 178 § 11.]

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

38.52.190 Compensation for injury or death—Chapter exclusive. Except as provided in this chapter, an emergency worker and his or her dependents shall have no right to receive compensation from the state, from the agency, from the local organization for emergency management with which he or she is registered, or from the county or city which has empowered the local organization for emergency management to register him or her and direct his or her activities, for an injury or death arising out of and occurring in the course of his or her activities as an emergency worker. [2011

c 336 § 792; 1984 c 38 § 18; 1974 ex.s. c 171 § 21; 1953 c 223 § 3.]

38.52.195 Exemption from liability while providing construction, equipment, or work. Notwithstanding any other provision of law, no person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide construction, equipment, or work as provided for in RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220, and 38.52.390 while complying with or attempting to comply with RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220, and 38.52.390 or any rule or regulation promulgated pursuant to the provisions of RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220, and 38.52.390 shall be liable for the death of or any injury to persons or damage to property as a result of any such activity: PROVIDED, That said exemption shall only apply where all of the following conditions occur:

(1) Where, at the time of the incident the worker is performing services as an emergency worker, and is acting within the course of his or her duties as an emergency worker;

(2) Where, at the time of the injury, loss, or damage, the organization for emergency management which the worker is assisting is an approved organization for emergency management;

(3) Where the injury, loss, or damage is proximately caused by his or her service either with or without negligence as an emergency worker;

(4) Where the injury, loss, or damage is not caused by the intoxication of the worker; and

(5) Where the injury, loss, or damage is not due to willful misconduct or gross negligence on the part of a worker. [2011 c 336 § 793; 1984 c 38 § 19; 1974 ex.s. c 171 § 22; 1971 ex.s. c 8 § 7.]

38.52.200 Liability for compensation is in lieu of other liability—Exception. Liability for the compensation provided by this chapter, as limited by the provisions thereof, is in lieu of any other liability whatsoever to an emergency worker or his or her dependents or any other person on the part of the state, the agency, the local organization for emergency management with which the emergency worker is registered, and the county or city which has empowered the local organization for emergency management to register him or her and direct his or her activities, for injury or death arising out of and in the course of his or her activities while on duty as an emergency worker: PROVIDED, That nothing in this chapter shall limit or bar the liability of the state or its political subdivisions engaged in proprietary functions as distinguished from governmental functions that may exist by reason of injury or death sustained by an emergency worker. [2011 c 336 § 794; 1984 c 38 § 20; 1974 ex.s. c 171 § 23; 1953 c 223 § 9.]

38.52.220 Compensation boards—Meetings—Claims not necessitating board meeting. Said compensation board shall meet on the call of its chair on a regular monthly meeting day when there is business to come before

it. The chair shall be required to call a meeting on any monthly meeting day when any claim for compensation under this chapter has been submitted to the board: PROVIDED, That as to claims involving amounts of two thousand dollars or less, the local organization director shall submit recommendations directly to the state without convening a compensation board. [2011 c 336 § 795; 1984 c 38 § 24; 1971 ex.s. c 8 § 3; 1953 c 223 § 5.]

38.52.230 Compensation boards—Attendance of witnesses, oaths, rules—Members uncompensated. The compensation board, in addition to other powers herein granted, shall have the power to compel the attendance of witnesses to testify before it on all matters connected with the operation of this chapter and its chair or any member of said board may administer oath to such witnesses; to make all necessary rules and regulations for its guidance in conformity with the provisions of this chapter: PROVIDED, HOWEVER, That no compensation or emoluments shall be paid to any member of said board for any duties performed as a member of said compensation board. [2011 c 336 § 796; 1953 c 223 § 6.]

38.52.260 When compensation furnished. Compensation shall be furnished to an emergency worker either within or without the state for any injury arising out of and occurring in the course of his or her activities as an emergency worker, and for the death of any such worker if the injury proximately causes death, in those cases where the following conditions occur:

(1) Where, at the time of the injury the emergency worker is performing services as an emergency worker, and is acting within the course of his or her duties as an emergency worker.

(2) Where, at the time of the injury the local organization for emergency management with which the emergency worker is registered is an approved local organization for emergency management.

(3) Where the injury is proximately caused by his or her service as an emergency worker, either with or without negligence.

(4) Where the injury is not caused by the intoxication of the injured emergency worker.

(5) Where the injury is not intentionally self-inflicted. [2011 c 336 § 797; 1984 c 38 § 27; 1974 ex.s. c 171 § 29; 1953 c 223 § 10.]

38.52.350 Benefits furnished under federal law—Reduction of state benefits. Should the United States or any agent thereof, in accordance with any federal statute or rule or regulation, furnish monetary assistance, benefits, or other temporary or permanent relief to emergency workers or to their dependents for injuries arising out of and occurring in the course of their activities as emergency workers, then the amount of compensation which any emergency worker or his or her dependents are otherwise entitled to receive from the state of Washington as provided herein, shall be reduced by the amount of monetary assistance, benefits, or other temporary or permanent relief the emergency worker or his or her dependents have received and will receive from the United States or any agent thereof as a result of his or her injury.

[2011 c 336 § 798; 1984 c 38 § 36; 1974 ex.s. c 171 § 37; 1953 c 223 § 19.]

38.52.380 State compensation denied if payment prevents federal benefits. If the furnishing of compensation under the provisions of this chapter to an emergency worker or his or her dependents prevents such emergency worker or his or her dependents from receiving assistance, benefits, or other temporary or permanent relief under the provisions of a federal statute or rule or regulation, then the emergency worker and his or her dependents shall have no right to, and shall not receive, any compensation from the state of Washington under the provisions of this chapter for any injury for which the United States or any agent thereof will furnish assistance, benefits, or other temporary or permanent relief in the absence of the furnishing of compensation by the state of Washington. [2011 c 336 § 799; 1984 c 38 § 39; 1974 ex.s. c 171 § 40; 1953 c 223 § 22.]

38.52.400 Search and rescue activities—Powers and duties of local officials. (1) The chief law enforcement officer of each political subdivision shall be responsible for local search and rescue activities. Operation of search and rescue activities shall be in accordance with state and local operations plans adopted by the elected governing body of each local political subdivision. These state and local plans must specify the use of the incident command system for multiagency/multijurisdiction search and rescue operations. The local emergency management director shall notify the department of all search and rescue missions. The local director of emergency management shall work in a coordinating capacity directly supporting all search and rescue activities in that political subdivision and in registering emergency search and rescue workers for employee status. The chief law enforcement officer of each political subdivision may restrict access to a specific search and rescue area to personnel authorized by him or her. Access shall be restricted only for the period of time necessary to accomplish the search and rescue mission. No unauthorized person shall interfere with a search and rescue mission.

(2) When search and rescue activities result in the discovery of a deceased person or search and rescue workers assist in the recovery of human remains, the chief law enforcement officer of the political subdivision shall insure compliance with chapter 68.50 RCW. [2011 c 336 § 800; 1997 c 49 § 5; 1986 c 266 § 43; 1984 c 38 § 41; 1979 ex.s. c 268 § 4.]

Additional notes found at www.leg.wa.gov

38.52.920 Repeal and saving. Chapter 177, Laws of 1941, chapters 6 and 24, Laws of 1943, and chapter 88, Laws of 1949 are repealed: PROVIDED, That this section shall not affect the validity of any order, rule, regulation, contract, or agreement made or promulgated under authority of the repealed acts, which orders, rules, regulations, contracts, or agreements shall remain in force until they may be repealed, amended, or superseded by orders, rules, regulations, contracts, or agreements made or promulgated under this chapter: PROVIDED FURTHER, That this section shall not affect the tenure of any officer, employee, or person serving

under authority of any repealed act and such officer, employee, or person shall continue in his or her position until such time as a successor is appointed or employed under the provisions of this chapter. [2011 c 336 § 801; 1951 c 178 § 17.]

Chapter 38.56 RCW

INTRASTATE MUTUAL AID SYSTEM

Sections

38.56.010	Definitions.
38.56.020	Intrastate mutual aid system—Established.
38.56.030	Member jurisdiction may request assistance from other member jurisdictions—Provisions.
38.56.040	Qualifications of emergency responders for the purposes of the requesting member jurisdiction.
38.56.050	Death or injury of emergency responder—Benefits.
38.56.060	Emergency responder—Not an employee of a requesting member jurisdiction.
38.56.070	Reimbursement for assistance provided.
38.56.080	Emergency responder of a responding member jurisdiction—Tort liability or immunity.

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

(1) "Assistance" means emergency responders and resources provided by a responding member jurisdiction in response to a request from a requesting member jurisdiction.

(2) "Department" means the state military department.

(3) "Emergency" means an event or set of circumstances that: (a) Demand immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrence; or (b) reach such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(4) "Emergency responder" means an employee of a responding member jurisdiction who is designated in writing by that responding member jurisdiction as possessing skills, qualifications, training, knowledge, or experience that may be needed, pursuant to a request for assistance under this chapter, for: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency.

(5) "Operational control" means the limited authority to direct tasks, assignments, and use of assistance provided pursuant to a request for assistance under this chapter to address: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency. "Operational control" does not include any right, privilege, or benefit of ownership or employment such as disposition, compensation, wages, salary, pensions, health benefits, leave, seniority, discipline, promotion, hiring, or firing.

(6) "Political subdivision" means any county, city, or town in the state of Washington.

(7) "Requesting member jurisdiction" means a member jurisdiction that requests assistance from another member jurisdiction under this chapter.

(8) "Resources" includes supplies, materials, equipment, facilities, energy, services, information, systems, and other assets except for emergency responders that may be needed,

pursuant to a request for assistance under this chapter, for: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency.

(9) "Responding member jurisdiction" means a member jurisdiction providing or intending to provide assistance to a requesting member jurisdiction under this chapter. [2011 c 79 § 1.]

38.56.020 Intrastate mutual aid system—Established. (1) The intrastate mutual aid system is established to provide for mutual assistance in an emergency among political subdivisions and federally recognized Indian tribes that choose to participate as member jurisdictions.

(2) Except as provided in subsection (3) of this section, member jurisdictions of the intrastate mutual aid system include:

(a) A political subdivision; and

(b) Any federally recognized Indian tribe located within the boundaries of the state of Washington upon receipt by the department of a tribal government resolution declaring its intention to be a member jurisdiction in the intrastate mutual aid system under this chapter.

(3)(a) A member jurisdiction is released from membership in the intrastate mutual aid system established under this chapter upon receipt by the department of a resolution or ordinance declaring that the member jurisdiction elects not to participate in the system.

(b) Nothing in this chapter may be construed to affect other mutual aid systems or agreements otherwise authorized by law, including the Washington state fire services mobilization plan and the law enforcement mobilization plan under chapter 43.43 RCW, nor preclude a political subdivision or Indian tribe from entering or participating in those mutual aid systems or agreements.

(4) Mutual assistance may be requested by, and provided to, member jurisdictions under this chapter for: (a) Response, mitigation, or recovery activities related to an emergency; or (b) participation in drills or exercises in preparation for an emergency. [2011 c 79 § 2.]

38.56.030 Member jurisdiction may request assistance from other member jurisdictions—Provisions. A member jurisdiction may request assistance from other member jurisdictions under the intrastate mutual aid system for response, mitigation, or recovery activities related to an emergency, or to participate in drills or exercises in preparation for an emergency, subject to each of the following provisions:

(1) Prior to requesting assistance, a requesting member jurisdiction must: (a) Have determined an emergency exists within its territorial limits consistent with applicable law, rule, regulation, code, ordinance, resolution, or other applicable legal authority; or (b) anticipate undertaking drills or exercises in preparation for an emergency.

(2) The chief executive officer of a requesting member jurisdiction, or authorized designee, must request assistance directly from the chief executive officer, or authorized designee, of another member jurisdiction. If this request is verbal,

it must be confirmed in writing within thirty days after the date of the request.

(3) A responding member jurisdiction may withhold or withdraw requested assistance at any time and for any reason, in its sole discretion.

(4) A responding member jurisdiction shall designate in writing all assistance it provides to a requesting member jurisdiction at the time provided consistent with the guidelines and procedures developed by the intrastate mutual aid committee, and deliver copies of this documentation to the requesting member jurisdiction within thirty days after the assistance is provided.

(5) The requesting member jurisdiction only has operational control of assistance provided under this chapter, which may not interfere with a responding member jurisdiction's right to withdraw assistance. [2011 c 79 § 3.]

38.56.040 Qualifications of emergency responders for the purposes of the requesting member jurisdiction.

An emergency responder holding a license, certificate, or other permit evidencing qualification in a professional, mechanical, or other skill, issued by the state of Washington or a political subdivision thereof, is deemed to be licensed, certified, or permitted in the requesting member jurisdiction for the duration of the emergency, drill, or exercise, subject to any limitations and conditions the chief executive officer of the requesting member jurisdiction may prescribe in writing. [2011 c 79 § 4.]

38.56.050 Death or injury of emergency responder—

Benefits. An emergency responder designated by a responding member jurisdiction under RCW 38.56.030(4), who dies or sustains an injury while providing assistance to a requesting member jurisdiction as an emergency responder under this chapter, is entitled to receive only the benefits otherwise authorized by law for death or injury sustained in the course of employment with the responding member jurisdiction. Any such benefits provided by a responding member jurisdiction to an emergency responder must be included in the true and full value of assistance provided for purposes of reimbursement under RCW 38.56.070. [2011 c 79 § 5.]

38.56.060 Emergency responder—Not an employee of a requesting member jurisdiction. An emergency responder is not an employee of the requesting member jurisdiction and is not entitled to any right, privilege, or benefit of employment from the requesting member jurisdiction, including but not limited to, compensation, wages, salary, leave, pensions, health, or other advantage. [2011 c 79 § 6.]

38.56.070 Reimbursement for assistance provided.

(1) A requesting member jurisdiction shall reimburse a responding member jurisdiction for the true and full value of all assistance provided under this chapter. However, if authorized by law, a responding member jurisdiction may donate assistance provided under this chapter to a requesting member jurisdiction.

(2) If a dispute regarding reimbursement arises between member jurisdictions, the member jurisdiction asserting the dispute shall provide written notice to the other identifying

the reimbursement issues in dispute. If the dispute is not resolved within ninety days after receipt of the dispute notice by the other party, either party to the dispute may invoke binding arbitration to resolve the reimbursement dispute by giving written notice to the other party. Within thirty days after receipt of the notice invoking binding arbitration, each party shall furnish the other a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. Costs of the arbitration, including compensation for the arbitrator's services, must be borne equally by the parties participating in the arbitration and each party bears its own costs and expenses, including legal fees and witness expenses, in connection with the arbitration proceeding. [2011 c 79 § 7.]

38.56.080 Emergency responder of a responding member jurisdiction—Tort liability or immunity.

For purposes of tort liability or immunity, an emergency responder of a responding member jurisdiction is considered an agent of the requesting member jurisdiction. No responding member jurisdiction or its officers or employees providing assistance under this chapter is liable for any act or omission while providing or attempting to provide assistance under this chapter in good faith. For purposes of this section, good faith does not include willful misconduct, gross negligence, or recklessness. [2011 c 79 § 8.]

Title 39

PUBLIC CONTRACTS AND INDEBTEDNESS

Chapters

- 39.04** Public works.
- 39.08** Contractor's bond.
- 39.12** Prevailing wages on public works.
- 39.29** Personal service contracts.
- 39.32** Acquisition of governmental property.
- 39.33** Intergovernmental disposition of property.
- 39.34** Interlocal cooperation act.
- 39.35** Energy conservation in design of public facilities.
- 39.35B** Life-cycle cost analysis of public facilities.
- 39.35C** Energy conservation projects.
- 39.35D** High-performance public buildings.
- 39.40** Vote required at bond elections.
- 39.42** State bonds, notes, and other evidences of indebtedness.
- 39.44** Bonds—Miscellaneous provisions, bond information reporting.
- 39.46** Bonds—Other miscellaneous provisions—Registration.
- 39.56** Warrants.
- 39.62** Uniform facsimile signature of public officials act.
- 39.64** Taxing district relief.
- 39.72** Lost or destroyed evidence of indebtedness.
- 39.84** Industrial development revenue bonds.
- 39.86** Private activity bond allocation.
- 39.88** Community redevelopment financing act.
- 39.94** Financing contracts.

- 39.100 Hospital benefit zones.
 39.106 Joint municipal utility services.
 39.108 Local infrastructure project areas.

Additional notes found at www.leg.wa.gov

Chapter 39.04 RCW
PUBLIC WORKS

Sections

- 39.04.080 Certified copy to be filed—Engineers' certificate.
 39.04.120 Change orders due to environmental protection requirements—Costs—Dispute resolution.
 39.04.380 Preference for resident contractors.

39.04.080 Certified copy to be filed—Engineers' certificate. A true copy of such account or record, duly certified by the officer or officers having by law authority to direct such work to be done, to be a full, true, and accurate account of the costs of executing such work shall be filed in the office where the original plans and specifications are filed within sixty days after the completion of the work.

The engineer or other officer having charge of the execution of such work shall execute a certificate which shall be attached to and filed with such certified copy, certifying that such work was executed in accordance with the plans and specifications on file and the times of commencement and completion of such work. If the work is not in accordance with such plans and specifications he or she shall set forth the manner and extent of the variance therefrom. [2011 c 336 § 802; 1923 c 183 § 7; RRS § 10322-7.]

39.04.120 Change orders due to environmental protection requirements—Costs—Dispute resolution. If the successful bidder must undertake additional work for public construction projects issued by the state of Washington, its authorities or agencies, or a political subdivision of the state due to the enactment of new environmental protection requirements or the amendment of existing environmental protection statutes, ordinances, or rules occurring after the submission of the successful bid, the awarding agency shall issue a change order setting forth the additional work that must be undertaken, which shall not invalidate the contract. The cost of such a change order to the awarding agency shall be determined in accordance with the provisions of the contract for change orders or, if no such provision is set forth in the contract, then the cost to the awarding agency shall be the contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, and subcontracts attributable to the additional activity plus a reasonable sum for overhead and profit. However, the additional costs to undertake work not specified in the contract documents shall not be approved unless written authorization is given the successful bidder prior to his or her undertaking such additional activity. In the event of a dispute between the awarding agency and the contractor, dispute resolution procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for dispute resolution, the then obtaining rules of the American arbitration association. [2011 c 336 § 803; 1998 c 196 § 1; 1973 1st ex.s. c 62 § 1.]

Delay due to litigation, change orders, costs, arbitration, termination: RCW 60.28.080.

39.04.380 Preference for resident contractors. (1) The *department of general administration must conduct a survey and compile the results into a list of which states provide a bidding preference on public works contracts for their resident contractors. The list must include details on the type of preference, the amount of the preference, and how the preference is applied. The list must be updated periodically as needed. The initial survey must be completed by November 1, 2011, and by December 1, 2011, the department must submit a report to the appropriate committees of the legislature on the results of the survey. The report must include the list and recommendations necessary to implement the intent of this section and section 2, chapter 345, Laws of 2011.

(2) The *department of general administration must distribute the report, along with the requirements of this section and section 2, chapter 345, Laws of 2011, to all state and local agencies with the authority to procure public works. The department may adopt rules and procedures to implement the reciprocity requirements in subsection (3) of this section. However, subsection (3) [of this section] does not take effect until the *department of general administration has adopted the rules and procedures for reciprocity under subsection (2) of this section [this subsection] or announced that it will not be issuing rules or procedures pursuant to this section.

(3) In any bidding process for public works in which a bid is received from a nonresident contractor from a state that provides a percentage bidding preference, a comparable percentage disadvantage must be applied to the bid of that nonresident contractor. This subsection does not apply until the *department of general administration has adopted the rules and procedures for reciprocity under subsection (2) of this section, or has determined and announced that rules are not necessary for implementation.

(4) A nonresident contractor from a state that provides a percentage bid preference means a contractor that:

(a) Is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts; and

(b) At the time of bidding on a public works project, does not have a physical office located in Washington.

(5) The state of residence for a nonresident contractor is the state in which the contractor was incorporated or, if not a corporation, the state where the contractor's business entity was formed.

(6) This section does not apply to public works procured pursuant to RCW 39.04.155, 39.04.280, or any other procurement exempt from competitive bidding. [2011 c 345 § 1.]

***Reviser's note:** The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107.

Conflict with federal requirements—2011 c 345: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or local authority, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or local authority." [2011 c 345 § 2.]

**Chapter 39.08 RCW
CONTRACTOR'S BOND**

Sections

39.08.065 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor.

39.08.065 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor.

Every person, firm, or corporation furnishing materials, supplies, or provisions to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state, or any county, city, town, district, municipality, or other public body, shall, not later than ten days after the date of the first delivery of such materials, supplies, or provisions to any subcontractor or agent of any person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution, or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm, or corporation has commenced to deliver materials, supplies, or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished and that such contractor and his or her bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his or her bond to recover for such material, supplies, or provisions or any part thereof unless the provisions of this section have been complied with. [2011 c 336 § 804; 1915 c 167 § 1; RRS § 1159-1. Formerly RCW 39.08.020.]

Chapter 39.12 RCW

PREVAILING WAGES ON PUBLIC WORKS

Sections

39.12.110 Failure to provide or allow inspection of records.

39.12.110 Failure to provide or allow inspection of records. Any employer, contractor, or subcontractor who fails to provide requested records, or fails to allow adequate inspection of records in an investigation by the department of labor and industries under this chapter within sixty calendar days of service of the department's request may not use the records in any proceeding under this chapter to challenge the correctness of any determination by the department that wages are owed, that a record or statement is false, or that the employer, contractor, or subcontractor has failed to file a record or statement. [2011 c 92 § 1.]

Chapter 39.29 RCW

PERSONAL SERVICE CONTRACTS

Sections

39.29.006 Definitions.
39.29.009 Prohibition on certain personal service contracts.
39.29.011 Competitive solicitation required—Exceptions.
39.29.016 Emergency contracts.
39.29.018 Sole source contracts.
39.29.025 Amendments.
39.29.055 Contracts—Filing—Public inspection—Review and approval—Effective date.
39.29.065 Department of enterprise services to establish policies and procedures—Adjustment of dollar thresholds.

39.29.068 Department of enterprise services to maintain list of contracts—Report to legislature.
39.29.075 Summary reports on contracts.
39.29.090 Contracts awarded by institutions of higher education.
39.29.100 Contract management—Uniform guidelines—Guidebook.
39.29.110 Use of guidelines—Report to department of enterprise services.
39.29.120 Contract management—Training—Risk-based audits—Reports.

39.29.006 Definitions. As used in this chapter:

(1) "Agency" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, and educational, correctional, and other types of institutions.

(2) "Client services" means services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

(3) "Common vendor registration and bid notification system" means the internet-based vendor registration and bid notification system maintained by and housed within the *department of general administration. The requirements contained in chapter 486, Laws of 2009 shall continue to apply to this system, regardless of future changes to its name or management structure.

(4) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services. "Competitive solicitation" includes posting of the contract opportunity on the state's common vendor registration and bid notification system.

(5) "Consultant" means an independent individual or firm contracting with an agency to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the agency except as to the result of the work. The agency monitors progress under the contract and authorizes payment.

(6) "Emergency" means a set of unforeseen circumstances beyond the control of the agency that either:

(a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(7) "Evidence of competition" means documentation demonstrating that the agency has solicited responses from multiple firms in selecting a consultant. "Evidence of competition" includes documentation that the agency has posted the contract opportunity on the state's common vendor registration and bid notification system.

(8) "In-state business" means a business that has its principal office located in Washington.

(9) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined under subsection (11) of this section. This term does include client services.

(10) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the state which is consistent with RCW 41.06.142.

(11) "Purchased services" means services provided by a vendor to accomplish routine, continuing and necessary functions. This term includes, but is not limited to, services acquired under RCW 43.19.190 or **43.105.041 for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(12) "Small business" means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either (i) fifty or fewer employees, or (ii) a gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years; or (b) is certified under chapter 39.19 RCW.

(13) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required. [2011 c 358 § 7; 2009 c 486 § 6; 2002 c 354 § 235; 1998 c 101 § 2; 1993 c 433 § 2; 1987 c 414 § 2; 1981 c 263 § 1; 1979 ex.s. c 61 § 2.]

Reviser's note: *(1) The "department of general administration" was renamed the "department of enterprise services" by 2011 1st sp.s. c 43 § 107. ***(2) RCW 43.105.041 was repealed by 2011 1st sp.s. c 43 § 1013.

Findings—Intent—2011 c 358: See note following RCW 43.19.725.

Intent—2009 c 486: "In addition to providing integrated, tailored management and technical assistance services to Washington small businesses, the legislature intends that the state shall further support them by developing procurement policies, procedures, and materials that encourage and facilitate state agency purchase of products and services from Washington small businesses." [2009 c 486 § 5.]

Conflict with federal requirements—2009 c 486: See note following RCW 28B.30.530.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

39.29.009 Prohibition on certain personal service contracts. Except under a specific statute to the contrary, agencies are prohibited from entering into personal service contracts with members of any agency board, commission, council, committee, or other similar group formed to advise the activities and management of state government for services related to work done as a member of the agency board, commission, council, committee, or other similar group. [2011 1st sp.s. c 21 § 60.]

39.29.011 Competitive solicitation required—Exceptions. All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

- (1) Emergency contracts;
- (2) Sole source contracts;
- (3) Contract amendments;
- (4) Contracts between a consultant and an agency of less than twenty thousand dollars. However, contracts of five

thousand dollars or greater but less than ten thousand dollars shall have documented evidence of competition. Contracts of ten thousand dollars or greater, but less than twenty thousand dollars, shall have documented evidence of competition, which must include agency posting of the contract opportunity on the state's common vendor registration and bid notification system. Agencies shall not structure contracts to evade these requirements; and

(5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the director of the department of enterprise services when it has been determined that a competitive solicitation process is not appropriate or cost-effective. [2011 1st sp.s. c 43 § 522; 2011 c 358 § 4; 2009 c 486 § 7; 1998 c 101 § 3; 1987 c 414 § 3.]

Reviser's note: This section was amended by 2011 c 358 § 4 and by 2011 1st sp.s. c 43 § 522, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—2011 c 358: See note following RCW 43.19.725.

Intent—2009 c 486: See note following RCW 39.29.006.

Conflict with federal requirements—2009 c 486: See note following RCW 28B.30.530.

39.29.016 Emergency contracts. Emergency contracts shall be filed with the department of enterprise services and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the department of enterprise services when the contract is filed. [2011 1st sp.s. c 43 § 523; 1998 c 101 § 4; 1996 c 288 § 29; 1987 c 414 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.29.018 Sole source contracts. (1) Sole source contracts shall be filed with the department of enterprise services and made available for public inspection at least ten working days prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the department of enterprise services when the contract is filed, and must include evidence that the agency posted the contract opportunity on the state's common vendor registration and bid notification system. For sole source contracts of twenty thousand dollars or more, documented justification shall also include evidence that the agency attempted to identify potential consultants by advertising through statewide or regional newspapers.

(2) The department of enterprise services shall approve sole source contracts of twenty thousand dollars or more before any such contract becomes binding and before any services may be performed under the contract. These requirements shall also apply to sole source contracts of less than twenty thousand dollars if the total amount of such contracts between an agency and the same consultant is twenty thousand dollars or more within a fiscal year. Agencies shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of twenty thousand dollars or more are rea-

sonable. [2011 1st sp.s. c 43 § 524; 2009 c 486 § 8; 1998 c 101 § 5; 1996 c 288 § 30; 1993 c 433 § 5; 1987 c 414 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2009 c 486: See note following RCW 39.29.006.

Conflict with federal requirements—2009 c 486: See note following RCW 28B.30.530.

39.29.025 Amendments. (1) Substantial changes in either the scope of work specified in the contract or in the scope of work specified in the formal solicitation document must generally be awarded as new contracts. Substantial changes executed by contract amendments must be submitted to the department of enterprise services, and are subject to approval by the department of enterprise services.

(2) An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent of the value of the original contract must be provided to the department of enterprise services.

(3) The department of enterprise services shall approve amendments provided to it under this section before the amendments become binding and before services may be performed under the amendments.

(4) The amendments must be filed with the department of enterprise services and made available for public inspection at least ten working days prior to the proposed starting date of services under the amendments.

(5) The department of enterprise services shall approve amendments provided to it under this section only if they meet the criteria for approval of the amendments established by the director of the department of enterprise services. [2011 1st sp.s. c 43 § 525; 1998 c 101 § 6; 1996 c 288 § 31; 1993 c 433 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.29.055 Contracts—Filing—Public inspection—Review and approval—Effective date. (1) Personal service contracts subject to competitive solicitation shall be (a) filed with the department of enterprise services and made available for public inspection; and (b) reviewed and approved by the department of enterprise services when those contracts provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting.

(2) Personal service contracts subject to competitive solicitation that provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting shall be made available for public inspection at least ten working days before the proposed starting date of the contract. All other contracts shall be effective no earlier than the date they are filed with the department of enterprise services. [2011 1st sp.s. c 43 § 526; 1998 c 101 § 8; 1996 c 288 § 32; 1993 c 433 § 7.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.29.065 Department of enterprise services to establish policies and procedures—Adjustment of dollar

thresholds. To implement this chapter, the director of the department of enterprise services shall establish procedures for the competitive solicitation and award of personal service contracts, recordkeeping requirements, and procedures for the reporting and filing of contracts. The director shall develop procurement policies and procedures, such as unbundled contracting and subcontracting, that encourage and facilitate the purchase of products and services by state agencies and institutions from Washington small businesses to the maximum extent practicable and consistent with international trade agreement commitments. For reporting purposes, the director may establish categories for grouping of contracts. The procedures required under this section shall also include the criteria for amending personal service contracts. At the beginning of each biennium, the director may, by administrative policy, adjust the dollar thresholds prescribed in RCW 39.29.011, 39.29.018, and 39.29.040 to levels not to exceed the percentage increase in the implicit price deflator. Adjusted dollar thresholds shall be rounded to the nearest five hundred dollar increment. [2011 1st sp.s. c 43 § 527; 2009 c 486 § 9; 1998 c 101 § 9; 1987 c 414 § 8.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2009 c 486: See note following RCW 39.29.006.

Conflict with federal requirements—2009 c 486: See note following RCW 28B.30.530.

39.29.068 Department of enterprise services to maintain list of contracts—Report to legislature. The department of enterprise services shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The department of enterprise services shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications, and employee training or recruiting services. The department of enterprise services shall report annually to the fiscal committees of the senate and house of representatives on sole source contracts filed under this chapter. The report shall describe: (1) The number and aggregate value of contracts for each category established in this section; (2) the number and aggregate value of contracts of five thousand dollars or greater but less than twenty thousand dollars; (3) the number and aggregate value of contracts of twenty thousand dollars or greater; (4) the justification provided by agencies for the use of sole source contracts; and (5) any trends in the use of sole source contracts. [2011 1st sp.s. c 43 § 528. Prior: 1998 c 245 § 33; 1998 c 101 § 10; 1993 c 433 § 8.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.29.075 Summary reports on contracts. As requested by the legislative auditor, the department of enterprise services shall provide information on contracts filed under this chapter for use in preparation of summary reports on personal services contracts. [2011 1st sp.s. c 43 § 529; 1987 c 414 § 9.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.29.090 Contracts awarded by institutions of higher education. Personal service contracts awarded by institutions of higher education from nonstate funds do not have to be filed in advance and approved by the department of enterprise services. Any such contract is subject to all other requirements of this chapter, including the requirements under *RCW 39.29.068 for annual reporting of personal service contracts to the department of enterprise services. [2011 1st sp.s. c 43 § 530; 1998 c 101 § 11.]

***Reviser's note:** Annual reporting requirements under RCW 39.29.068 were amended by 1998 c 101 § 10, and removed by 1998 c 245 § 33.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.29.100 Contract management—Uniform guidelines—Guidebook. (1) The department of enterprise services shall adopt uniform guidelines for the effective and efficient management of personal service contracts and client service contracts by all state agencies. The guidelines must, at a minimum, include:

- (a) Accounting methods, systems, measures, and principles to be used by agencies and contractors;
- (b) Precontract procedures for selecting potential contractors based on their qualifications and ability to perform;
- (c) Incorporation of performance measures and measurable benchmarks in contracts, and the use of performance audits;
- (d) Uniform contract terms to ensure contract performance and compliance with state and federal standards;
- (e) Proper payment and reimbursement methods to ensure that the state receives full value for taxpayer moneys, including cost settlements and cost allowance;
- (f) Postcontract procedures, including methods for recovering improperly spent or overspent moneys for disallowance and adjustment;
- (g) Adequate contract remedies and sanctions to ensure compliance;
- (h) Monitoring, fund tracking, risk assessment, and auditing procedures and requirements;
- (i) Financial reporting, record retention, and record access procedures and requirements;
- (j) Procedures and criteria for terminating contracts for cause or otherwise; and
- (k) Any other subject related to effective and efficient contract management.

(2) The department of enterprise services shall submit the guidelines required by subsection (1) of this section to the governor and the appropriate standing committees of the legislature no later than December 1, 2002.

(3) The department of enterprise services shall publish a guidebook for use by state agencies containing the guidelines

[2011 RCW Supp—page 714]

required by subsection (1) of this section. [2011 1st sp.s. c 43 § 531; 2002 c 260 § 7.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2002 c 260 § 7: "Section 7 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2002]." [2002 c 260 § 12.]

39.29.110 Use of guidelines—Report to department of enterprise services. (1) A state agency entering into or renewing personal service contracts or client service contracts shall follow the guidelines required by RCW 39.29.100.

(2) A state agency that has entered into or renewed personal service contracts or client service contracts during a calendar year shall, on or before January 1st of the following calendar year, provide the department of enterprise services with a report detailing the procedures the agency employed in entering into, renewing, and managing the contracts.

(3) The provisions of this section apply to state agencies entering into or renewing contracts after January 1, 2003. [2011 1st sp.s. c 43 § 532; 2002 c 260 § 8.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2002 c 260 §§ 8 and 9: "Sections 8 and 9 of this act take effect January 1, 2003." [2002 c 260 § 13.]

39.29.120 Contract management—Training—Risk-based audits—Reports. (1) The department of enterprise services shall provide a training course for agency personnel responsible for executing and managing personal service contracts and client service contracts. The course must contain training on effective and efficient contract management under the guidelines established under RCW 39.29.100. State agencies shall require agency employees responsible for executing or managing personal service contracts and client service contracts to complete the training course to the satisfaction of the department of enterprise services. Beginning January 1, 2004, no agency employee may execute or manage personal service contracts or client service contracts unless the employee has completed the training course. Any request for exception to this requirement shall be submitted to the department of enterprise services in writing and shall be approved by the department of enterprise services prior to the employee executing or managing the contract.

(2)(a) The department of enterprise services shall conduct risk-based audits of the contracting practices associated with individual personal service and client service contracts from multiple state agencies to ensure compliance with the guidelines established in RCW 39.29.110. The department of enterprise services shall conduct the number of audits deemed appropriate by the director of the department of enterprise services based on funding provided.

(b) The department of enterprise services shall forward the results of the audits conducted under this section to the governor, the appropriate standing committees of the legislature, and the joint legislative audit and review committee. [2011 1st sp.s. c 43 § 533; 2002 c 260 § 9.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2002 c 260 §§ 8 and 9: See note following RCW 39.29.110.

Chapter 39.32 RCW

ACQUISITION OF GOVERNMENTAL PROPERTY

Sections

39.32.035 Administration and use of enterprise services account—Director's authority to lease and acquire surplus property.

39.32.035 Administration and use of enterprise services account—Director's authority to lease and acquire surplus property. The enterprise services account shall be administered by the director of enterprise services and be used for the purchase, lease or other acquisition from time to time of surplus property from any federal, state, or local government surplus property disposal agency. The director may purchase, lease or acquire such surplus property on the requisition of an eligible donee and without such requisition at such time or times as he or she deems it advantageous to do so; and in either case he or she shall be responsible for the care and custody of the property purchased so long as it remains in his or her possession. [2011 1st sp.s. c 43 § 252; 1998 c 105 § 3; 1995 c 137 § 4; 1977 ex.s. c 135 § 3; 1967 ex.s. c 70 § 4; 1945 c 205 § 4; Rem. Supp. 1945 § 10322-63. Formerly RCW 39.32.030, part.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

Chapter 39.33 RCW

INTERGOVERNMENTAL DISPOSITION OF PROPERTY

Sections

39.33.010 Sale, exchange, transfer, lease of public property authorized—Section deemed alternative.

39.33.010 Sale, exchange, transfer, lease of public property authorized—Section deemed alternative. (1) The state or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to the state or any municipality or any political subdivision thereof, or the federal government, or a federally recognized Indian tribe, on such terms and conditions as may be mutually agreed upon by the proper authorities of the state and/or the subdivisions concerned. In addition, the state, or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease, or otherwise dispose of personal property, except weapons, to a foreign entity.

(2) This section shall be deemed to provide an alternative method for the doing of the things authorized herein, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in the state, municipalities or political subdivisions.

(3) No intergovernmental transfer, lease, or other disposition of property made pursuant to any other provision of law prior to May 23, 1972, shall be construed to be invalid solely because the parties thereto did not comply with the

procedures of this section. [2011 c 259 § 1; 2003 c 303 § 1; 1981 c 96 § 1; 1973 c 109 § 1; 1972 ex.s. c 95 § 1; 1953 c 133 § 1.]

Effective date—2003 c 303: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 303 § 2.]

Exchange of county tax title lands with other governmental agencies: Chapter 36.35 RCW.

Chapter 39.34 RCW

INTERLOCAL COOPERATION ACT

Sections

39.34.055 Public purchase agreements with public benefit nonprofit corporations.
39.34.150 Transactions between state agencies—Advancements.
39.34.215 Watershed management partnerships—Eminent domain authority.

39.34.055 Public purchase agreements with public benefit nonprofit corporations. The department of enterprise services may enter into an agreement with a public benefit nonprofit corporation to allow the public benefit nonprofit corporation to participate in state contracts for purchases administered by the department. Such agreement must comply with the requirements of RCW 39.34.030 through 39.34.050. For the purposes of this section "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in RCW 24.03.005 that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or a political subdivision of another state. [2011 1st sp.s. c 43 § 246; 1994 c 98 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

39.34.150 Transactions between state agencies—Advancements. State agencies are authorized to advance funds to defray charges for materials to be furnished or services to be rendered by other state agencies. Such advances shall be made only upon the approval of the director of financial management, or his or her order made pursuant to an appropriate regulation requiring advances in certain cases. An advance shall be made from the fund or appropriation available for the procuring of such services or materials, to the state agency which is to perform the services or furnish the materials, in an amount no greater than the estimated charges therefor. [2011 c 336 § 805; 1979 c 151 § 47; 1969 ex.s. c 61 § 3.]

39.34.215 Watershed management partnerships—Eminent domain authority. (1) As limited in subsection (3) of this section, a watershed management partnership formed or qualified under the authority of RCW 39.34.200 and 39.34.210, including the separate legal entity established by such a partnership under RCW 39.34.030(3)(b) to conduct the cooperative undertaking of the partnership under the same statutory authority, may exercise the power of eminent domain as provided in chapter 8.12 RCW.

(2) The eminent domain authority granted under subsection (1) of this section may be exercised only for those utility

purposes for which the watershed partnership was formed and is limited solely to providing water services to its customers.

(3) Subsection (1) of this section applies only to a watershed management partnership that:

(a) Was formed or qualified before July 1, 2006, under the authority of RCW 39.34.200 and 39.34.210;

(b) Is not engaged in planning or in implementing a plan for a water resource inventory area under the terms of chapter 90.82 RCW;

(c) Is composed entirely of cities and water-sewer districts authorized to exercise the power of eminent domain in the manner provided by chapter 8.12 RCW; and

(d) Is governed by a board of directors consisting entirely of elected officials from the cities and water-sewer districts that constitute the watershed management partnership.

(4) A watershed management partnership exercising authority under this section shall:

(a) Comply with the notice requirements of RCW 8.25.290; and

(b) Provide notice to the city, town, or county with jurisdiction over the subject property by certified mail thirty days prior to the partnership board authorizing condemnation. [2011 c 97 § 1; 2009 c 504 § 1.]

Chapter 39.35 RCW

ENERGY CONSERVATION IN DESIGN OF PUBLIC FACILITIES

Sections

39.35.030 Definitions.

39.35.030 Definitions. For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. Where these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. 292.202 (c) through (m) as of July 28, 1991, shall apply.

(2) "Department" means the state department of enterprise services.

(3) "Design standards" means the heating, air-conditioning, ventilating, and renewable resource systems identified, analyzed, and recommended by the department as providing an efficient energy system or systems based on the economic life of the selected buildings.

(4) "Economic life" means the projected or anticipated useful life of a major facility as expressed by a term of years.

(5) "Energy management system" means a program, energy efficiency equipment, technology, device, or other measure including, but not limited to, a management, educational, or promotional program, smart appliance, meter reading system that provides energy information capability, computer software or hardware, communications equipment or hardware, thermostat or other control equipment, together with related administrative or operational programs, that

allows identification and management of opportunities for improvement in the efficiency of energy use, including but not limited to a measure that allows:

(a) Energy consumers to obtain information about their energy usage and the cost of energy in connection with their usage;

(b) Interactive communication between energy consumers and their energy suppliers;

(c) Energy consumers to respond to energy price signals and to manage their purchase and use of energy; or

(d) For other kinds of dynamic, demand-side energy management.

(6) "Energy systems" means all utilities, including, but not limited to, heating, air-conditioning, ventilating, lighting, and the supplying of domestic hot water.

(7) "Energy-consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment, and components, and the external energy load imposed on a major facility by the climatic conditions of its location. An energy-consumption analysis of the operation of energy systems of a major facility shall include, but not be limited to, the following elements:

(a) The comparison of three or more system alternatives, at least one of which shall include renewable energy systems, and one of which shall comply at a minimum with the sustainable design guidelines of the United States green building council leadership in energy and environmental design silver standard or similar design standard as may be adopted by rule by the department;

(b) The simulation of each system over the entire range of operation of such facility for a year's operating period; and

(c) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

The energy-consumption analysis shall be prepared by a professional engineer or licensed architect who may use computers or such other methods as are capable of producing predictable results.

(8) "Initial cost" means the moneys required for the capital construction or renovation of a major facility.

(9) "Life-cycle cost" means the initial cost and cost of operation of a major facility over its economic life. This shall be calculated as the initial cost plus the operation, maintenance, and energy costs over its economic life, reflecting anticipated increases in these costs discounted to present value at the current rate for borrowing public funds, as determined by the office of financial management. The energy cost projections used shall be those provided by the department. The department shall update these projections at least every two years.

(10) "Life-cycle cost analysis" includes, but is not limited to, the following elements:

(a) The coordination and positioning of a major facility on its physical site;

(b) The amount and type of fenestration employed in a major facility;

(c) The amount of insulation incorporated into the design of a major facility;

(d) The variable occupancy and operating conditions of a major facility; and

(e) An energy-consumption analysis of a major facility.

(11) "Major facility" means any publicly owned or leased building having twenty-five thousand square feet or more of usable floor space.

(12) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(13) "Renewable energy systems" means methods of facility design and construction and types of equipment for the utilization of renewable energy sources including, but not limited to, hydroelectric power, active or passive solar space heating or cooling, domestic solar water heating, windmills, waste heat, biomass and/or refuse-derived fuels, photovoltaic devices, and geothermal energy.

(14) "Renovation" means additions, alterations, or repairs within any twelve-month period which exceed fifty percent of the value of a major facility and which will affect any energy system.

(15) "Selected buildings" means educational, office, residential care, and correctional facilities that are designed to comply with the design standards analyzed and recommended by the department. [2011 1st sp.s. c 43 § 247; 2001 c 214 § 16; 1996 c 186 § 402; 1994 c 242 § 1; 1991 c 201 § 14; 1982 c 159 § 3; 1975 1st ex.s. c 177 § 3.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Additional notes found at www.leg.wa.gov

Chapter 39.35B RCW

LIFE-CYCLE COST ANALYSIS OF PUBLIC FACILITIES

Sections

39.35B.050 Life-cycle cost model and analysis—Duties of the office of financial management. (*Effective until June 30, 2013.*)

39.35B.050 Life-cycle cost model and analysis—Duties of the office of financial management. (*Effective until June 30, 2013.*) The office of financial management shall:

(1) Design and implement a cost-effective life-cycle cost model by October 1, 2008, based on the work completed by the joint legislative audit and review committee in January 2007 and in consultation with legislative fiscal committees;

(2) Deploy the life-cycle cost model for use by state agencies once completed and tested;

(3) Update the life-cycle cost model periodically in consultation with legislative fiscal committees;

(4) Establish clear policies, standards, and procedures regarding the use of life-cycle cost analysis by state agencies including:

(a) When state agencies must use the life-cycle cost analysis, including the types of proposed capital projects and leased facilities to which it must be applied;

(b) Procedures state agencies must use to document the results of required life-cycle cost analyses;

(c) Standards regarding the discount rate and other key model assumptions;

(d) A process to document and justify any deviation from the standard assumptions;

(e) Establish a requirement that agencies conduct the analysis comparing a thirty-year and fifty-year building life when using the life-cycle cost model; and

(f) Establish a requirement that agencies include renovation, system replacement, and remodel costs in maintenance costs for use in the life-cycle cost model. [2011 1st sp.s. c 48 § 7005; 2007 c 506 § 3.]

Expiration date—2011 1st sp.s. c 48 § 7005: "Section 7005 of this act expires June 30, 2013." [2011 1st sp.s. c 48 § 7038.]

Effective dates—2011 1st sp.s. c 48: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 15, 2011], except for sections 7022 through 7025 and 7027 of this act which take effect July 1, 2011." [2011 1st sp.s. c 48 § 7039.]

Findings—Intent—2007 c 506: See note following RCW 43.82.035.

Chapter 39.35C RCW

ENERGY CONSERVATION PROJECTS

Sections

39.35C.010 Definitions.

39.35C.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2) "Conservation" means reduced energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results, but does not include thermal or electric energy production from cogeneration. "Conservation" also means reductions in the use or cost of water, wastewater, or solid waste.

(3) "Cost-effective" means that the present value to a state agency or school district of the energy reasonably expected to be saved or produced by a facility, activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(4) "Department" means the state department of enterprise services.

(5) "Energy" means energy as defined in RCW 43.21F.025(5).

(6) "Energy audit" has the definition provided in RCW 43.19.670, and may include a determination of the water or solid waste consumption characteristics of a facility.

(7) "Energy efficiency project" means a conservation or cogeneration project.

(8) "Energy efficiency services" means assistance furnished by the department to state agencies and school districts in identifying, evaluating, and implementing energy efficiency projects.

(9) "Local utility" means the utility or utilities in whose service territory a public facility is located.

(10) "Performance-based contracting" means contracts for which payment is conditional on achieving contractually specified energy savings.

(11) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(12) "Public facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency or school district.

(13) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

(14) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

(15) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state. [2011 1st sp.s. c 43 § 248; 2007 c 39 § 4; 2001 c 214 § 20; 1996 c 186 § 405; 1991 c 201 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—Effective date—2001 c 214: See notes following RCW 80.50.010.

Findings—2001 c 214: See note following RCW 39.35.010.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Chapter 39.35D RCW

HIGH-PERFORMANCE PUBLIC BUILDINGS

Sections

- 39.35D.020 Definitions.
 39.35D.030 Standards for major facility projects—Annual reports.
 39.35D.040 Public school district major facility projects—Standards—Annual reports—Advisory committee.

39.35D.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of enterprise services.

(2) "High-performance public buildings" means high-performance public buildings designed, constructed, and certified to a standard as identified in this chapter.

(3) "Institutions of higher education" means the state universities, the regional universities, The Evergreen State College, the community colleges, and the technical colleges.

(4) "LEED silver standard" means the United States green building council leadership in energy and environmen-

tal design green building rating standard, referred to as silver standard.

(5)(a) "Major facility project" means: (i) A construction project larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code; or (ii) a building renovation project when the cost is greater than fifty percent of the assessed value and the project is larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code.

(b) "Major facility project" does not include: (i) Projects for which the department, public school district, or other applicable agency and the design team determine the LEED silver standard or the Washington sustainable school design protocol to be not practicable; or (ii) transmitter buildings, pumping stations, hospitals, research facilities primarily used for sponsored laboratory experimentation, laboratory research, or laboratory training in research methods, or other similar building types as determined by the department. When the LEED silver standard is determined to be not practicable for a project, then it must be determined if any LEED standard is practicable for the project. If LEED standards or the Washington sustainable school design protocol are not followed for the project, the public school district or public agency shall report these reasons to the department.

(6) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and public higher education institution.

(7) "Public school district" means a school district eligible to receive state basic education moneys pursuant to RCW 28A.150.250 and 28A.150.260.

(8) "Washington sustainable school design protocol" means the school design protocol and related information developed by the office of the superintendent of public instruction, in conjunction with school districts and the school facilities advisory board. [2011 1st sp.s. c 43 § 249; 2006 c 263 § 330; 2005 c 12 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

39.35D.030 Standards for major facility projects—Annual reports. (1) All major facility projects of public agencies receiving any funding in a state capital budget, or projects financed through a financing contract as defined in RCW 39.94.020, must be designed, constructed, and certified to at least the LEED silver standard. This subsection applies to major facility projects that have not entered the design phase prior to July 24, 2005, and to the extent appropriate LEED silver standards exist for that type of building or facility.

(2) All major facility projects of any entity other than a public agency or public school district receiving any funding in a state capital budget must be designed, constructed, and certified to at least the LEED silver standard. This subsection applies to major facility projects that have not entered the grant application process prior to July 24, 2005, and to the extent appropriate LEED silver standards exist for that type of building or facility.

(3)(a) Public agencies, under this section, shall monitor and document ongoing operating savings resulting from major facility projects designed, constructed, and certified as required under this section.

(b) Public agencies, under this section, shall report annually to the department on major facility projects and operating savings.

(4) The department shall consolidate the reports required in subsection (3) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the department shall also report on the implementation of this chapter, including reasons why the LEED standard was not used as required by RCW 39.35D.020(5)(b). The department shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

(5) For the purposes of determining compliance with the requirement for a project to be designed, constructed, and certified to at least the LEED silver standard, the department must credit one additional point for a project that uses wood products with a credible third-party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act. For projects that qualify for this additional point, and for which an additional point would have resulted in formal certification under the LEED silver standard, the project must be deemed to meet the standard under this section. [2011 c 99 § 1; 2005 c 12 § 3.]

39.35D.040 Public school district major facility projects—Standards—Annual reports—Advisory committee. (1) All major facility projects of public school districts receiving any funding in a state capital budget must be designed and constructed to at least the LEED silver standard or the Washington sustainable school design protocol. To the extent appropriate LEED silver or Washington sustainable school design protocol standards exist for the type of building or facility, this subsection applies to major facility projects that have not received project approval from the superintendent of public instruction prior to: (a) July 1, 2006, for volunteering school districts; (b) July 1, 2007, for class one school districts; and (c) July 1, 2008, for class two school districts.

(2) Public school districts under this section shall: (a) Monitor and document appropriate operating benefits and savings resulting from major facility projects designed and constructed as required under this section for a minimum of five years following local board acceptance of a project receiving state funding; and (b) report annually to the superintendent of public instruction. The form and content of each report must be mutually developed by the office of the superintendent of public instruction in consultation with school districts.

(3) The superintendent of public instruction shall consolidate the reports required in subsection (2) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the superintendent of public instruction shall also report on the implementation of this chapter, including reasons why the LEED standard or Wash-

ington sustainable school design protocol was not used as required by RCW 39.35D.020(5)(b). The superintendent of public instruction shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

(4) The superintendent of public instruction shall develop and issue guidelines for administering this chapter for public school districts. The purpose of the guidelines is to define a procedure and method for employing and verifying compliance with the LEED silver standard or the Washington sustainable school design protocol.

(5) The superintendent of public instruction shall utilize the school facilities advisory board as a high-performance buildings advisory committee comprised of affected public schools, the superintendent of public instruction, the department, and others at the superintendent of public instruction's discretion to provide advice on implementing this chapter. Among other duties, the advisory committee shall make recommendations regarding an education and training process and an ongoing evaluation or feedback process to help the superintendent of public instruction implement this chapter.

(6) For projects that comply with this section by meeting the LEED silver standard, the superintendent of public instruction must credit one additional point for a project that uses wood products with a credible third-party sustainable forest certification or from forests regulated under chapter 76.09 RCW, the Washington forest practices act. For projects that qualify for this additional point, and for which an additional point would have resulted in formal certification under the LEED silver standard, the project must be deemed to meet the requirements of subsection (1) of this section. [2011 c 99 § 2; 2006 c 263 § 331; 2005 c 12 § 4.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Chapter 39.40 RCW

VOTE REQUIRED AT BOND ELECTIONS

Sections

39.40.030 Certification of votes—Canvass.

39.40.030 Certification of votes—Canvass. The election officials in each of the precincts included within any such district shall, as soon as possible and in no case later than five days after the closing of the polls of any election involving the issuance of bonds, certify to the county auditor of the county within which such district is located the total number of votes cast for and against each separate proposal and the vote shall be canvassed and certified by a canvassing board consisting of the chair of the board of county commissioners, the county auditor, and the prosecuting attorney who shall declare the result thereof. [2011 c 336 § 806; 1959 c 290 § 4; 1925 c 13 § 3; RRS § 5646-3.]

Chapter 39.42 RCW

STATE BONDS, NOTES, AND OTHER EVIDENCES OF INDEBTEDNESS

Sections

39.42.140 Working debt limit.

39.42.140 Working debt limit. The state finance committee must recommend a working debt limit for purposes of budget development for various purpose capital bond appropriations. Nothing in this section shall in any manner affect the validity of indebtedness incurred in compliance with the provisions of Article VIII, section 1 of the state Constitution. The working debt limit must be updated periodically following forecasts of the economic and revenue forecast council. The governor and legislature must develop capital bond budgets within the most recent recommended working debt limit. The working debt limit must be lower than the state constitutional debt limit in order to reserve capacity under the constitutional limit for emergencies and economic uncertainties. In order to begin to accomplish the objectives of stabilizing debt capacity and reducing the debt service burden on the operating budget, the state finance committee must recommend working debt limits of eight and one-half percent from July 1, 2015, to and including June 30, 2017; eight and one-quarter percent from July 1, 2017, to and including June 30, 2019; eight percent from July 1, 2019, to and including June 30, 2021; seven and three-quarters percent from July 1, 2021, and thereafter. The state finance committee may recommend modified working debt limits in response to extraordinary economic conditions. The state finance committee is authorized to reduce or delay the issuance of bonds if an issuance would result in exceeding the recommended working debt limit. [2011 1st sp.s. c 46 § 3.]

Intent—2011 1st sp.s. c 46: "The legislature intends to examine the various kinds of debt incurred by Washington state and the limitations that control the amount and use of debt. To assist in this examination, the legislature seeks the assistance and recommendations of a commission on state debt." [2011 1st sp.s. c 46 § 1.]

Commission on state debt—Creation—Report—2011 1st sp.s. c 46: "(1) The commission on state debt is created. The commission shall include the following members: The state treasurer, who shall chair the commission; the director of the office of financial management; one member each from the two largest caucuses of the senate, appointed by the president of the senate; one member each from the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives; six independent members, three appointed by the state treasurer in consultation with the state finance committee and three appointed by the governor in consultation with the state finance committee. These six independent members must not have a financial interest in debt-financed state expenditures and shall include appointees with experience in public or private finance, local government, or related academic or legal backgrounds. The members of the commission shall serve without additional compensation, but shall be reimbursed in accordance with RCW 44.04.120 for attending meetings of the commission. Staffing for the commission shall be provided by the state treasurer's office, the office of financial management, and legislative capital budget staff.

(2) The commission shall examine the following:

(a) Trends in the use of all kinds of state obligations including general obligation bonds; revenue bonds and other debt that supports the transportation budget; financing contracts; lease purchase agreements; and other forms of obligations including long-term liabilities such as pension liabilities and long-term leases. The examination of trends must also examine the impact of debt service payments on operating budget expenditures.

(b) Major uses of state debt, the debt service expenditures associated with those major uses, and a comparison of the debt service expenditures and other operating budget expenditures that addresses similar policy objectives

as the major uses of debt.

(c) Existing limitations and policies on the use of various kinds of debt and how those policies and limitations compare with other states with similar or higher credit ratings. The comparisons will include an examination of relative debt burden and the relationship between state debt and debt incurred by local governments in the comparison states.

(3) The commission must recommend improvements in state debt policies and limitations, including possible amendments to state constitutional debt limitations that will accomplish the following:

(a) Stabilizes the capacity to incur new debt in support of sustainable and predictable capital budgets;

(b) Reduces the growth in debt service payments to an appropriate level that no longer exceeds the long-term growth in the general fund expenditures;

(c) Maintain and enhance the state's credit rating.

(4) The commission must consult affected stakeholders.

(5) The commission must report its findings and recommendations to the state finance committee and the appropriate committees of the legislature by December 1, 2011." [2011 1st sp.s. c 46 § 2.]

Chapter 39.44 RCW

BONDS—MISCELLANEOUS PROVISIONS, BOND INFORMATION REPORTING

Sections

39.44.102 Facsimile signatures on bonds and coupons—Statements and signatures required on registered bonds.
39.44.110 Registration—Payment—Assignment.
39.44.120 Payment of coupon interest.

39.44.102 Facsimile signatures on bonds and coupons—Statements and signatures required on registered bonds. Where any bond so issued requires registration by the county treasurer, that bond shall bear a statement on the back thereof showing the name of the person to whom sold, date of issue, the number and series of the bond, and shall be signed by the county treasurer in his or her own name or by a deputy county treasurer in his or her own name. [2011 c 336 § 807; 1955 c 375 § 3.]

39.44.110 Registration—Payment—Assignment. Upon the presentation at the office of the officer or agent hereinafter provided for, any bond which is bearer in form that has heretofore been or may hereafter be issued by any county, city, town, port, school district, or other municipal or quasi municipal corporation in this state, may, if so provided in the proceedings authorizing the issuance of the same, be registered as to principal in the name of the owner upon the books of such municipality to be kept in said office, such registration to be noted on the reverse of the bond by such officer or agent. The principal of any bond so registered shall be payable only to the payee, his or her legal representative, successors or assigns, and such bond shall be transferable to another registered holder or back to bearer only upon presentation to such officer or agent, with a written assignment duly acknowledged or proved. The name of the assignee shall be written upon any bond so transferred and in the books so kept in the office of such officer or agent. [2011 c 336 § 808; 1983 c 167 § 108; 1961 c 141 § 4; 1915 c 91 § 1; RRS § 5494.]

Additional notes found at www.leg.wa.gov

39.44.120 Payment of coupon interest. If so provided in the proceedings authorizing the issuance of any such bonds, upon the registration thereof as to principal, or at any time thereafter, the coupons thereto attached, evidencing all

interest to be paid thereon to the date of maturity, may be surrendered to the officer or agent hereinafter provided and the bonds shall also become registered as to interest. Such coupons shall be canceled by such officer or agent, who shall sign a statement endorsed upon such bond of the cancellation of all unmatured coupons and the registration of such bond. Thereafter the interest evidenced by such canceled coupons shall be paid at the times provided therein to the registered owner of such bond in lawful money of the United States of America mailed to his or her address. [2011 c 336 § 809; 1983 c 167 § 109; 1961 c 141 § 5; 1915 c 91 § 2; RRS § 5495.]

Additional notes found at www.leg.wa.gov

Chapter 39.46 RCW

BONDS—OTHER MISCELLANEOUS PROVISIONS—REGISTRATION

Sections

39.46.020	Definitions.
39.46.040	Bonds—Issuer to determine amount, terms, conditions, interest, etc.—Designated representative.
39.46.170	Out-of-state issuers—Issuance of bonds for projects within the state.

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

(1) "Bond" means any agreement which may or may not be represented by a physical instrument, including notes, warrants, or certificates of indebtedness, that evidences an indebtedness of the state or a local government or a fund thereof, where the state or local government agrees to pay a specified amount of money, with or without interest, at a designated time or times to either registered owners or bearers, including debt issued under chapter 39.50 RCW.

(2) "Host approval" means an approval of an issue of bonds by an applicable elected representative of the state or local government, having jurisdiction, for purposes of section 147(f)(2)(A)(ii) of the internal revenue code, over the area in which a facility is located that is to be financed with bonds issued by an issuer that is not the state or a local government.

(3) "Local government" means any county, city, town, special purpose district, political subdivision, municipal corporation, or quasi-municipal corporation, including any public corporation created by such an entity.

(4) "Obligation" means an agreement that evidences an indebtedness of the state or a local government, other than a bond, and includes, but is not limited to, conditional sales contracts, lease obligations, and promissory notes.

(5) "State" includes the state, agencies of the state, and public corporations created by the state or agencies of the state.

(6) "Treasurer" means the state treasurer, county treasurer, city treasurer, or treasurer of any other municipal corporation. [2011 c 211 § 1; 2001 c 299 § 15; 1995 c 38 § 6; 1994 c 301 § 10; 1983 c 167 § 2.]

Additional notes found at www.leg.wa.gov

39.46.040 Bonds—Issuer to determine amount, terms, conditions, interest, etc.—Designated representa-

tive. (1) A local government authorized to issue bonds must determine for the bond issue its amount, date or dates, terms not in excess of the maximum term otherwise provided in law, conditions, bond denominations, interest rate or rates, which may be fixed or variable, interest payment dates, maturity or maturities, redemption rights, registration privileges, manner of execution, price, manner of sale, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may be as provided in RCW 39.46.030.

(2) If an ordinance or resolution approving the issuance of bonds authorizes an officer or employee of the local government to serve as its designated representative and to accept, on behalf of the local government, an offer to purchase those bonds, the acceptance of the offer by the designated representative must be consistent with terms established by the ordinance or resolution, and with additional parameters set by the governing body of the local government in the ordinance or resolution. That ordinance or resolution must establish the following terms for the bonds or set forth parameters with respect thereto: The amount, date or dates, denominations, interest rate or rates (or mechanism for determining interest rate or rates), payment dates, final maturity, redemption rights, price, minimum savings for refunding bonds (if the refunding bonds are issued for savings purposes), and any other terms and conditions deemed appropriate by the legislative body of the local government. A county designating a representative in accordance with this subsection must act in a manner that is consistent with the approved county debt policy adopted in accordance with RCW 36.48.070. [2011 c 210 § 1; 1983 c 167 § 4.]

Application to previously issued bonds—2011 c 210: "All bonds previously issued and any reimbursements previously made with bond proceeds by any local government and consistent with the provisions of this act are hereby validated, ratified, and confirmed." [2011 c 210 § 6.]

Additional notes found at www.leg.wa.gov

39.46.170 Out-of-state issuers—Issuance of bonds for projects within the state. (1) It is the policy of this state that in order to maintain an effective system of monitoring the use of federal subsidies within the state, facilities within the state proposed to be financed with bonds issued by an issuer formed or organized under the laws of another state must receive prior approval from the statewide issuer authorized by the laws of Washington to issue bonds for the proposed project in accordance with this section.

(2)(a) At least one hundred twenty days prior to the public hearing for the proposed issuance of bonds for a project located in this state by an issuer formed or organized under the laws of another state, the issuer must notify the statewide issuer authorized under the laws of Washington to issue bonds for the proposed project and provide the information required under (b) of this subsection.

(b) The following items and information must be received by the statewide issuer authorized under the laws of Washington to issue bonds for the proposed project:

- (i) A copy of the proposed notice of public hearing pertaining to the facilities, providing the date and location of the proposed hearing;
- (ii) The maximum stated principal amount of the bonds;
- (iii) A description of the facility, including its location;

(iv) A description of the plan of finance;
 (v) The name of the issuer of the bonds;
 (vi) The name of the initial owner or principal user of the facility;

(vii) A description of how the project will meet the public policy requirements and objectives of this state including the policies of the statewide issuer under Washington law; and

(viii) A check in the amount established by the statewide issuer under Washington law to perform the review.

(c) If the statewide issuer authorized to issue the bonds under Washington law determines that the facility and the items and information submitted under (b) of this subsection are consistent with the laws and public policy of the state and are in the best interest of the state, then the statewide issuer shall issue a written approval under this section authorizing the governmental unit to grant its host approval of the public hearing in its discretion.

(d) If the statewide issuer authorized to issue the bonds under Washington law determines that the facility and the items and information submitted under (b) of this subsection are not consistent with the laws and public policy of the state and are not in the best interest of the state, then the public hearing may not proceed and the bonds may not be issued by an issuer formed or organized under the laws of another state.

(3)(a) By December 1, 2011, annually each December 1st until December 1, 2014, and December 1st every five years thereafter, each statewide issuer receiving the notice required by subsection (2) of this section from an issuer formed or organized under the laws of another state shall, within existing funds, submit a report to the appropriate committees of the legislature.

(b) Each report under (a) of this subsection must provide, for annual reports the following information from the previous fiscal year, and for other reports the following information from each of the previous fiscal years:

(i) The number of proposed projects for which the statewide issuer received notice and the information described under subsection (2) of this section;

(ii) A description of the projects for which notice was submitted;

(iii) The dollar amount of each proposed project;

(iv) The location of each proposed project;

(v) Whether the proposed project was approved by the statewide issuer; and

(vi) For any project that was not approved by the statewide issuer, the reasons for the statewide issuer's decision. [2011 c 211 § 2.]

Chapter 39.56 RCW

WARRANTS

Sections

39.56.030 Issuing officer to fix rate.

39.56.030 Issuing officer to fix rate. It shall be the duty of every public officer issuing public warrants to make monthly investigation to ascertain the market value of the current warrants issued by him or her, and he or she shall, so far as practicable, fix the rate of interest on the warrants

[2011 RCW Supp—page 722]

issued by him or her during the ensuing month so that the par value shall be the market value thereof. [2011 c 336 § 810; 1981 c 156 § 16; 1981 c 10 § 4; 1899 c 80 § 5; RRS § 7303.]

Chapter 39.62 RCW

UNIFORM FACSIMILE SIGNATURE OF PUBLIC OFFICIALS ACT

Sections

39.62.020 Facsimile signature—Authorized—Legal effect.

39.62.020 Facsimile signature—Authorized—Legal effect. Any authorized officer, after filing with the secretary of state his or her manual signature certified by him or her under oath, may execute or cause to be executed with a facsimile signature in lieu of his or her manual signature:

(1) Any public security: PROVIDED, That at least one signature required or permitted to be placed thereon shall be manually subscribed, and

(2) Any instrument of payment.

Upon compliance with this chapter by the authorized officer, his or her facsimile signature has the same legal effect as his or her manual signature. [2011 c 336 § 811; 1969 c 86 § 2.]

Chapter 39.64 RCW

TAXING DISTRICT RELIEF

Sections

39.64.080 Powers under plan of readjustment.

39.64.080 Powers under plan of readjustment. Such taxing district shall have power to consummate the plan of readjustment, as adopted by the court's decree and approved by it as aforesaid, and if such plan, as approved by such decree, so requires, may, for such purpose, exercise any of the following powers:

(1) Cancel in whole or in part any assessments or any interest or penalties assessed thereon which may be outstanding and a lien upon any property in such taxing district, as and when such assessments are replaced by the readjusted or revised assessments provided for in the plan of readjustment approved by such decree.

(2) Issue refunding bonds to refund bonds theretofore issued by such taxing district. Such refunding bonds shall have such denominations, rates of interest, and maturities as shall be provided in such plan of readjustment and shall be payable by special assessments or by general taxes, according to the nature of the taxing district, in the manner provided in such plan of readjustment and decree.

(3) Apportion and levy new assessments or taxes appropriate in time or times of payment to provide funds for the payment of principal and interest of such refunding bonds, and of all expenses incurred by such taxing district in filing the petition mentioned in RCW 39.64.040, and any and all other expenses necessary or incidental to the consummation of the plan of readjustment.

In the case of special assessment districts for the refunding of whose debts no procedure is provided by existing laws, such assessments shall be equitably apportioned and levied upon each lot, tract, or parcel of real property within such tax-

ing district, due consideration being given to the relative extent to which the original apportionments upon the various lots, tracts, or parcels of real property within such taxing district have already been paid and due consideration also being given to the capacity of the respective lots, tracts, or parcels of real property to carry such charges against them. Before levying or apportioning such assessment such taxing district or the officer or officers, board, council, or commission mentioned in RCW 39.64.030 shall hold a hearing with reference thereto, notice of which hearing shall be published once a week for four consecutive weeks in the newspaper designated for the publication of legal notices by the legislative body of the city or town, or by the board of county commissioners of the county within which such taxing district or any part thereof is located, or in any newspaper published in the city, town, or county within which such taxing district or any part thereof is located and of general circulation within such taxing district. At such hearing every owner of real property within such taxing district shall be given an opportunity to be heard with respect to the apportionment and levy of such assessment.

(4) In the case of special assessment districts, of cities or towns, provide that if any of the real property within such taxing district shall not, on foreclosure of the lien of such new assessment for delinquent assessments and penalties and interest thereon, be sold for a sufficient amount to pay such delinquent assessments, penalties, and interest, or if any real property assessed was not subject to assessment, or if any assessment or installment or installments thereof shall have been eliminated by foreclosure of a tax lien or made void in any other manner, such taxing district shall cause a supplemental assessment sufficient in amount to make up such deficiency to be made on the real property within such taxing district, including real property upon which any such assessment or any installment or installments thereof shall have been so eliminated or made void. Such supplemental assessment shall be apportioned to the various lots, tracts, and parcels of real property within such taxing district in proportion to the amounts apportioned thereto in the assessment originally made under such plan of readjustment.

(5) Provide that refunding bonds may, at the option of the holders thereof, be converted into warrants of such denominations and bearing such rate of interest as may be provided in the plan of readjustment, and that the new assessments mentioned in subsection (3) of this section and the supplemental assessments mentioned in subsection (4) of this section may be paid in refunding bonds or warrants of such taxing district without regard to the serial numbers thereof, or in money, at the option of the person paying such assessments, such refunding bonds and warrants to be received at their par value in payment of such assessments. In such case such refunding bonds and warrants shall bear the following legend: "This bond (or warrant) shall be accepted at its face value in payment of assessments (including interest and penalties thereon) levied to pay the principal and interest of the series of bonds and warrants of which this bond (or warrant) is one without regard to the serial number appearing upon the face hereof."

(6) Provide that all sums of money already paid to the treasurer of such taxing district or other authorized officer in payment, in whole or in part, of any assessment levied by or

for such taxing district or of interest or penalties thereon, shall be transferred by such treasurer or other authorized officer to a new account and made applicable to the payment of refunding bonds and warrants to be issued under such plan of readjustment.

(7) Provide that such treasurer or other authorized officer shall have authority to use funds in his or her possession not required for payment of current interest of such bonds and warrants, to buy such bonds and warrants in the open market through tenders or by call at the lowest prices obtainable at or below par and accrued interest, without preference of one bond or warrant over another because of its serial number, or for any other cause other than the date and hour of such tender or other offer and the amount which the owner of such bond or warrant agrees to accept for it. In such case such refunding bonds and warrants shall bear the following legend: "This bond (or warrant) may be retired by tender or by call without regard to the serial number appearing upon the face hereof."

(8) Provide that if, after the payment of all interest on refunding bonds and warrants issued under any plan of readjustment adopted pursuant to this chapter and chapter IX of the federal bankruptcy act and the retirement of such bonds and warrants, there shall be remaining in the hands of the treasurer or other authorized officer of the taxing district which issued such bonds and warrants money applicable under the provisions of this chapter to the payment of such interest, bonds, and warrants, such money shall be applied by such treasurer or other authorized officer to the maintenance, repair, and replacement of the improvements originally financed by the bonds readjusted under this chapter and the federal bankruptcy act.

(9) The above enumeration of powers shall not be deemed to exclude powers not herein mentioned that may be necessary for or incidental to the accomplishment of the purposes hereof. [2011 c 336 § 812; 1935 c 143 § 9; RRS § 5608-9.]

Chapter 39.72 RCW LOST OR DESTROYED EVIDENCE OF INDEBTEDNESS

Sections

39.72.020 Local government indebtedness—Records to be kept—Cancellation of originals.

39.72.020 Local government indebtedness—Records to be kept—Cancellation of originals. When a municipal corporation issues a duplicate instrument, as authorized in this chapter, the issuing officer of such municipal corporation shall keep a full and complete record of all warrants, bonds, or other instruments alleged to have been lost or destroyed, which were issued by such municipal corporation, and of the issue of any duplicate therefor; and upon the issuance of any duplicate such officer shall enter upon his or her books the cancellation of the original instrument and immediately notify the treasurer of the county, city or other municipal corporation, the state auditor, and all trustees and paying agencies authorized to redeem such instruments on behalf of the municipal corporation, of such cancellation. The treasurer

shall keep a similar list of all warrants, bonds, or other instruments so canceled. [2011 c 336 § 813; 1965 ex.s. c 61 § 5.]

Chapter 39.84 RCW

INDUSTRIAL DEVELOPMENT REVENUE BONDS

Sections

39.84.100 Revenue bonds—Provisions.

39.84.100 Revenue bonds—Provisions. (1) The principal of and the interest on any revenue bonds issued by a public corporation shall be payable solely from the funds provided for this payment from the revenues of the industrial development facilities funded by the revenue bonds. Each issue of revenue bonds shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times as may be determined by the board of directors, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the board of directors prior to the issuance of the revenue bonds or other revenue obligations.

(2) The board of directors shall determine the form and the manner of execution of the revenue bonds and shall fix the denomination or denominations of the revenue bonds and the place or places of payment of principal and interest. If any officer whose signature or a facsimile of whose signature appears on any revenue bonds or any coupons ceases to be an officer before the delivery of the revenue bonds, the signature shall for all purposes have the same effect as if he or she had remained in office until delivery. The revenue bonds may be issued in coupon or in registered form, as provided in RCW 39.46.030, or both as the board of directors may determine, and provisions may be made for the registration of any coupon revenue bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. A public corporation may sell revenue bonds at public or private sale for such price and bearing interest at such fixed or variable rate as may be determined by the board of directors.

(3) The proceeds of the revenue bonds of each issue shall be used solely for the payment of all or part of the project cost of or for the making of a loan in the amount of all or part of the project cost of the industrial development facility for which authorized and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the revenue bonds or in the trust agreement securing the bonds. If the proceeds of the revenue bonds of any series issued with respect to the cost of any industrial development facility exceeds the cost of the industrial development facility for which issued, the surplus shall be deposited to the credit of the debt service fund for the revenue bonds or used to purchase revenue bonds in the open market.

(4) A public corporation may issue interim notes in the manner provided for the issuance of revenue bonds to fund industrial development facilities prior to issuing other revenue bonds to fund such facilities. A public corporation may issue revenue bonds to fund industrial development facilities

that are exchangeable for other revenue bonds when these other revenue bonds are executed and available for delivery.

(5) The principal of and interest on any revenue bonds issued by a public corporation shall be secured by a pledge of unexpended bond proceeds and the revenues and receipts received by the public corporation from the industrial development facilities funded by the revenue bonds pursuant to financing documents. The resolution under which the revenue bonds are authorized to be issued and any financing document may contain agreements and provisions respecting the maintenance or use of the industrial development facility covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues or from revenue bond proceeds, the rights and remedies available in the event of default, and other provisions relating to the security for the bonds, all as the board of directors consider advisable which are not in conflict with this chapter.

(6) The governing body of the municipality under whose auspices the public corporation is created shall approve by resolution any agreement to issue revenue bonds adopted by a public corporation, which agreement and resolution shall set out the amount and purpose of the revenue bonds. Additionally, no issue of revenue bonds, including refunding bonds, may be sold and delivered by a public corporation without a resolution of the governing body of the municipality under whose auspices the public corporation is created, adopted no more than sixty days before the date of sale of the revenue bonds specifically, approving the resolution of the public corporation providing for the issuance of the revenue bonds.

(7) All revenue bonds issued under this chapter and any interest coupons applicable thereto are negotiable instruments within the meaning of Article 8 of the Uniform Commercial Code, Title 62A RCW, regardless of form or character.

(8) Notwithstanding subsections (1) and (2) of this section, such bonds and interim notes may be issued and sold in accordance with chapter 39.46 RCW. [2011 c 336 § 814; 1983 c 167 § 115; 1981 c 300 § 10.]

Additional notes found at www.leg.wa.gov

Chapter 39.86 RCW

PRIVATE ACTIVITY BOND ALLOCATION

Sections

39.86.130 Criteria. (*Effective July 1, 2012.*)

39.86.140 Procedure for obtaining state ceiling allocation.

39.86.130 Criteria. (*Effective July 1, 2012.*) (1) In granting an allocation, reallocation, or carryforward of the state ceiling as provided in this chapter, the agency shall consider existing state priorities and other such criteria, including but not limited to, the following criteria:

(a) Need of issuers to issue bonds within a bond use category subject to a state ceiling;

(b) Amount of the state ceiling available;

(c) Public benefit and purpose to be satisfied, including economic development, educational opportunity, and public health, safety, or welfare;

(d) Cost or availability of alternative methods of financing for the project or program; and

(e) Certainty of using the allocation which is being requested.

(2) In determining whether to allocate an amount of the state ceiling to an issuer within any bond use category, the agency shall consider, but is not limited to, the following criteria for each of the bond use categories:

(a) Housing: Criteria which comply with RCW 43.180.200.

(b) Student loans: Criteria which comply with the applicable provisions of Title 28B RCW and rules adopted by the office of student financial assistance or applicable state agency dealing with student financial aid.

(c) Small issue: Factors which may include:

(i) The number of employment opportunities the project is likely to create or retain in relation to the amount of the bond issuance;

(ii) The level of unemployment existing in the geographic area likely to be affected by the project;

(iii) A commitment to providing employment opportunities to low-income persons in cooperation with the employment security department;

(iv) Geographic distribution of projects;

(v) The number of persons who will benefit from the project;

(vi) Consistency with criteria identified in subsection (1) of this section; and

(vii) Order in which requests were received.

(d) Exempt facility or redevelopment: Factors which may include:

(i) State issuance needs;

(ii) Consistency with criteria identified in subsection (1) of this section;

(iii) Order in which requests were received;

(iv) The proportionate number of persons in relationship to the size of the community who will benefit from the project; and

(v) The unique timing and issuance needs of large scale projects that may require allocations in more than one year.

(e) Public utility: Factors which may include:

(i) Consistency with criteria identified in subsection (1) of this section; and

(ii) Timing needs for issuance of bonds over a multi-year period. [2011 1st sp.s. c 11 § 243; 2010 1st sp.s. c 6 § 7; 1987 c 297 § 4.]

Effective date—2011 1st sp.s. c 11 §§ 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Short title—2010 1st sp.s. c 6: See note following RCW 43.180.160.

39.86.140 Procedure for obtaining state ceiling allocation. (1) No issuer may receive an allocation of the state ceiling without a certificate of approval from the agency. The agency may not make an allocation of the state ceiling to an issuer formed or organized under the laws of another state.

(2) For each state ceiling allocation request, an issuer shall submit to the agency, no sooner than ninety days prior to the beginning of a calendar year for which an allocation of the state ceiling is being requested, a form identifying:

(a) The amount of the allocation sought;

(b) The bond use category from which the allocation sought would be made;

(c) The project or program for which the allocation is requested;

(d) The financing schedule for which the allocation is needed; and

(e) Any other such information required by the agency, including information which corresponds to the allocation criteria of RCW 39.86.130.

(3) The agency may approve or deny an allocation for all or a portion of the issuer's request. Any denied request, however, shall remain on file with the agency for the remainder of the calendar year and shall be considered for receiving any allocation, reallocation, or carryforward of unused portions of the state ceiling during that period.

(4) After receiving an allocation request, the agency shall mail to the requesting issuer a written certificate of approval or notice of denial for an allocation amount, by a date no later than the latest of the following:

(a) February 1st of the calendar year for which the request is made;

(b) Fifteen days from the date the agency receives an allocation request; or

(c) Fifteen days from the date the agency receives a recommendation by the *board with regard to a small issue allocation request, should the *board choose to review individual requests.

(5)(a) For requests of the state ceiling of any calendar year, the following applies to all bond use categories except housing and student loans:

(i) Except for housing and student loans, any allocations granted prior to April 1st, for which bonds have not been issued by July 1st of the same calendar year, shall revert to the agency on July 1st of the same calendar year for reallocation unless an extension or carryforward is granted;

(ii) Except for housing and student loans, any allocations granted on or after April 1st, for which bonds have not been issued by October 15th of the same calendar year, shall revert to the agency on October 15th of the same calendar year for reallocation unless an extension or carryforward is granted.

(b) For each calendar year, any housing or student loan allocations, for which bonds have not been issued by December 15th of the same calendar year, shall revert to the agency on December 15th of the same calendar year for reallocation unless an extension or carryforward is granted.

(6) An extension of the deadlines provided by subsection (5) of this section may be granted by the agency for the approved allocation amount or a portion thereof, based on:

(a) Firm and convincing evidence that the bonds will be issued before the end of the calendar year if the extension is granted; and

(b) Any other criteria the agency deems appropriate.

(7) If an issuer determines that bonds subject to the state ceiling will not be issued for the project or program for which an allocation was granted, the issuer shall promptly notify the agency in writing so that the allocation may be canceled and the amount may be available for reallocation.

(8) Bonds subject to the state ceiling may be issued only to finance the project or program for which a certificate of approval is granted.

(9) Within three business days of the date that bonds for which an allocation of the state ceiling is granted have been delivered to the original purchasers, the issuer shall mail to the agency a written notification of the bond issuance. In accordance with chapter 39.44 RCW, the issuer shall also complete bond issuance information on the form provided by the agency.

(10) If the total amount of bonds issued under the authority of a state ceiling for a project or program is less than the amount allocated, the remaining portion of the allocation shall revert to the agency for reallocation in accordance with the criteria in RCW 39.86.130. If the amount of bonds actually issued under the authority of a state ceiling is greater than the amount allocated, the entire allocation shall be disallowed. [2011 c 211 § 3; 2010 1st sp.s. c 6 § 8; 1987 c 297 § 5.]

***Reviser's note:** RCW 39.86.110 was amended by 2010 1st sp.s. c 6 § 4, deleting the definition of "board."

Short title—2010 1st sp.s. c 6: See note following RCW 43.180.160.

Chapter 39.88 RCW

COMMUNITY REDEVELOPMENT FINANCING ACT

Sections

39.88.020 Definitions.

39.88.020 Definitions. As used in this chapter the following terms have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Apportionment district" means the geographic area, within an urban area, from which regular property taxes are to be apportioned to finance a public improvement contained therein.

(2) "Assessed value of real property" means the valuation of real property as placed on the last completed assessment roll of the county.

(3) "City" means any city or town.

(4) "Ordinance" means any appropriate method of taking a legislative action by a county or city, whether known as a statute, resolution, ordinance, or otherwise.

(5) "Public improvement" means an undertaking to provide public facilities in an urban area which the sponsor has authority to provide.

(6) "Public improvement costs" means the costs of design, planning, acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, and installation of the public improvement; costs of relocation, maintenance, and operation of property pending construction of the public improvement; costs of utilities relocated as a result of the public improvement; costs of financing, including interest during construction, legal and other professional services, taxes, and insurance; costs incurred by the assessor to revalue real property for the purpose of determining the tax allocation base value that are in excess of costs incurred by the assessor in accordance with his or her revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; and administrative costs reasonably necessary and related to these costs. These costs may include costs incurred prior to the adoption

of the public improvement ordinance, but subsequent to July 10, 1982.

(7) "Public improvement ordinance" means the ordinance passed under RCW 39.88.040(4).

(8) "Regular property taxes" means regular property taxes as now or hereafter defined in RCW 84.04.140, except regular property taxes levied by port districts or public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness.

(9) "Sponsor" means any county or city initiating and undertaking a public improvement.

(10) "Tax allocation base value of real property" means the true and fair value of real property within an apportionment district for the year in which the apportionment district was established.

(11) "Tax allocation bonds" means any bonds, notes, or other obligations issued by a sponsor pursuant to *section 10 of this act.

(12) "Tax allocation revenues" means those tax revenues allocated to a sponsor under RCW 39.88.070(1)(b).

(13) "Taxing districts" means any governmental entity which levies or has levied for it regular property taxes upon real property located within a proposed or approved apportionment district.

(14) "Urban area" means an area in a city or located outside of a city that is characterized by intensive use of the land for the location of structures and receiving such urban services as sewers, water, and other public utilities and services normally associated with urbanized areas. Not more than twenty-five percent of the area within the urban area proposed apportionment district may be vacant land.

(15) "Value of taxable property" means value of taxable property as defined in RCW 39.36.015. [2011 c 336 § 815; 1982 1st ex.s. c 42 § 3.]

Reviser's note: *(1) "section 10 of this act," codified as RCW 39.88.090, deals with general obligation bonds. Tax allocation bonds are the subject of section 11 (RCW 39.88.100), which was apparently intended. The error arose in the renumbering of sections in the engrossing of amendments to Second Substitute Senate Bill No. 4603 [1982 1st ex.s. c 42].

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Chapter 39.94 RCW

FINANCING CONTRACTS

Sections

39.94.040 State finance committee—Duties—Legislative approval required, when.

39.94.040 State finance committee—Duties—Legislative approval required, when. (1) Except as provided in RCW 28B.10.022, the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established from time to time by the state finance committee or participate in a program providing for the issuance of certificates of participation, including any contract for credit enhancement, without the prior approval of the state finance committee. Except as provided in RCW 28B.10.022, the state finance committee shall approve the form of all financing contracts or a standard format for all financing contracts. The state finance committee also may:

Chapter 39.100 RCW

HOSPITAL BENEFIT ZONES

Sections

39.100.010 Definitions.

39.100.020 Conditions for financing public improvements.

(a) Consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more agencies, departments, instrumentalities of the state, the state board for community and technical colleges, or a state institution of higher learning; or to be acquired by another agency;

(b) Approve programs providing for the issuance of certificates of participation in master financing contracts for the state or for other agencies;

(c) Enter into agreements with trustees relating to master financing contracts; and

(d) Make appropriate rules for the performance of its duties under this chapter.

(2) In the performance of its duties under this chapter, the state finance committee may consult with representatives from the department of general administration, the office of financial management, and the office of the chief information officer.

(3) With the approval of the state finance committee, the state also may enter into agreements with trustees relating to financing contracts and the issuance of certificates of participation.

(4) Except for financing contracts for real property used for the purposes described under chapter 28B.140 RCW, the state may not enter into any financing contract for real property of the state without prior approval of the legislature. For the purposes of this requirement, a financing contract must be treated as used for real property if it is being entered into by the state for the acquisition of land; the acquisition of an existing building; the construction of a new building; or a major remodeling, renovation, rehabilitation, or rebuilding of an existing building. Prior approval of the legislature is not required under this chapter for a financing contract entered into by the state under this chapter for energy conservation improvements to existing buildings where such improvements include: (a) Fixtures and equipment that are not part of a major remodeling, renovation, rehabilitation, or rebuilding of the building, or (b) other improvements to the building that are being performed for the primary purpose of energy conservation. Such energy conservation improvements must be determined eligible for financing under this chapter by the office of financial management in accordance with financing guidelines established by the state treasurer, and are to be treated as personal property for the purposes of this chapter.

(5) The state may not enter into any financing contract on behalf of another agency without the approval of such a financing contract by the governing body of the other agency. [2011 1st sp.s. c 43 § 726; 2011 c 151 § 7. Prior: 2010 1st sp.s. c 36 § 6015; 2010 1st sp.s. c 35 § 406; 2003 c 6 § 2; 2002 c 151 § 6; 1998 c 291 § 5; 1989 c 356 § 4.]

Reviser's note: This section was reenacted by 2011 c 151 § 7 and amended by 2011 1st sp.s. c 43 § 726, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2010 1st sp.s. c 36: See note following RCW 43.155.050.

Contingent effective date—2010 1st sp.s. c 35: See note following RCW 43.331.040.

Additional notes found at www.leg.wa.gov

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

(1) "Benefit zone" means the geographic zone from which taxes are to be appropriated to finance public improvements authorized under this chapter and in which a hospital that has received a certificate of need is to be constructed.

(2) "Department" means the department of revenue.

(3) "Local government" means any city, town, county, or any combination thereof.

(4) "Ordinance" means any appropriate method of taking legislative action by a local government.

(5) "Participating taxing authority" means a taxing authority that has entered into a written agreement with a local government for the use of hospital benefit zone financing to the extent of allocating excess local excise taxes to the local government for the purpose of financing all or a portion of the costs of designated public improvements.

(6) "Public improvements" means:

(a) Infrastructure improvements within the benefit zone that include:

(i) Street and road construction and maintenance;

(ii) Water and sewer system construction and improvements;

(iii) Sidewalks and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas; and

(vii) Storm water and drainage management systems;

and

(b) The construction, maintenance, and improvement of state highways that are connected to the benefit zone, including interchanges connected to the benefit zone.

(7) "Public improvement costs" means the costs of: (a) Design, planning, acquisition including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) demolishing, relocating, maintaining, and operating property pending construction of public improvements; (c) relocating utilities as a result of public improvements; and (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on indebtedness issued to finance public improvements, and any necessary reserves for indebtedness; and administrative expenses and feasibility studies reasonably necessary and related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of hospital benefit zone financing to fund the costs of the public improvements.

(8) "Tax allocation revenues" means those tax revenues derived from the receipt of excess local excise taxes under RCW 39.100.050 and distributed by a local government, par-

ticipating taxing authority, or both, to finance public improvements.

(9) "Taxing authority" means a governmental entity that imposes a sales or use tax under chapter 82.14 RCW upon the occurrence of any taxable event within a proposed or approved benefit zone. [2011 c 363 § 1; 2007 c 266 § 2; 2006 c 111 § 1.]

Finding—2007 c 266: "The legislature finds that local governments need flexible financing for public improvements that do not increase the combined state and local sales tax rate." [2007 c 266 § 1.]

Application—2007 c 266: "This act applies retroactively to July 1, 2006." [2007 c 266 § 10.]

Effective date—2007 c 266: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 266 § 11.]

39.100.020 Conditions for financing public improvements. A local government may finance public improvements using hospital benefit zone financing subject to the following conditions:

(1)(a) The local government adopts an ordinance designating a benefit zone within its boundaries and specifying the public improvements proposed to be financed in whole or in part with the use of hospital benefit zone financing;

(b) A local government may modify the public improvements to be financed in whole or in part with the use of hospital benefit zone financing by amending the ordinance adopted under (a) of this subsection and holding a public hearing consistent with RCW 39.100.030(1)(b); provided that the total cost of the public improvements is not increased;

(2) The public improvements proposed to be financed in whole or in part using hospital benefit zone financing are expected both to encourage private development within the benefit zone and to support the development of a hospital that has received a certificate of need;

(3) Private development that is anticipated to occur within the benefit zone, as a result of the public improvements, will be consistent with the countywide planning policy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(4) The governing body of the local government finds that the public improvements proposed to be financed in whole or in part using hospital benefit zone financing are reasonably likely to:

- (a) Increase private investment within the benefit zone;
- (b) Increase employment within the benefit zone; and
- (c) Generate, over the period of time that the local sales and use tax will be imposed under RCW 82.14.465, excess state excise taxes that are equal to or greater than the state contributions made under this chapter;

(5) The boundaries of a hospital benefit zone may not overlap any part of the boundaries of another hospital benefit zone or a revenue development area defined in chapter 39.102 RCW; and

(6) The boundaries of a hospital benefit zone may not change once the hospital benefit zone is established and approved by the department. [2011 c 363 § 2; 2007 c 266 § 3; 2006 c 111 § 2.]

Finding—Application—Effective date—2007 c 266: See notes following RCW 39.100.010.

Chapter 39.106 RCW

JOINT MUNICIPAL UTILITY SERVICES

Sections

- 39.106.010 Short title—Purpose—Intent—2011 c 258.
- 39.106.020 Definitions.
- 39.106.030 Formation of authorities—Characteristics—Substantive powers.
- 39.106.040 Corporate powers of authorities.
- 39.106.050 Elements of joint municipal utility services agreements.
- 39.106.060 Authority of members to assist authority and to transfer funds, property, and other assets.
- 39.106.070 Tax exemptions and preferences.
- 39.106.080 Conversion of existing entities into authorities.
- 39.106.090 Powers conferred by chapter are supplemental.

39.106.010 Short title—Purpose—Intent—2011 c 258. (1) Chapter 258, Laws of 2011 shall be known as the joint municipal utility services act.

(2) It is the purpose of chapter 258, Laws of 2011 to improve the ability of local government utilities to plan, finance, construct, acquire, maintain, operate, and provide facilities and utility services to the public, and to reduce costs and improve the benefits, efficiency, and quality of utility services.

(3) Chapter 258, Laws of 2011 is intended to facilitate joint municipal utility services and is not intended to expand the types of services provided by local governments or their utilities. Further, nothing in chapter 258, Laws of 2011 is intended to alter the regulatory powers of cities, counties, or other local governments or state agencies that exercise such powers. Further, nothing in chapter 258, Laws of 2011 may be construed to alter the underlying authority of the units of local government that enter into agreements under chapter 258, Laws of 2011 or to diminish in any way the authority of local governments to enter into agreements under chapter 39.34 RCW or other applicable law. [2011 c 258 § 1.]

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

(1) "Agreement" means a joint municipal utility services agreement, among members, that forms an authority, as more fully described in this chapter.

(2) "Authority" means a joint municipal utility services authority formed under this chapter.

(3) "Board of directors" or "board" means the board of directors of an authority.

(4) "Member" means a city, town, county, water-sewer district, public utility district, other special purpose district, municipal corporation, or other unit of local government of this or another state that provides utility services, and any Indian tribe recognized as such by the United States government, that is a party to an agreement forming an authority.

(5) "Utility services," for purposes of this chapter, means any or all of the following functions: The provision of retail or wholesale water supply and water conservation services; the provision of wastewater, sewage, or septage collection, handling, treatment, transmission, or disposal services; the provision of point and nonpoint water pollution monitoring

programs; the provision for the generation, production, storage, distribution, use, or management of reclaimed water; and the management and handling of storm water, surface water, drainage, and flood waters. [2011 c 258 § 2.]

39.106.030 Formation of authorities—Characteristics—Substantive powers. (1) An authority may be formed by two or more members pursuant to this chapter by execution of a joint municipal utility services agreement that materially complies with the requirements of RCW 39.106.050. Except as otherwise provided in RCW 39.106.080, at the time of execution of an agreement each member must be providing the type of utility service or services that will be provided by the authority. The agreement must be approved by the legislative authority of each of the members. The agreement must be filed with the Washington state secretary of state, who must provide a certificate of filing with respect to any authority. An authority shall be deemed to have been formed as of the date of that filing. The formation and activities of an authority, and the admission or withdrawal of members, are not subject to review by any boundary review board. Any amendments to an agreement must be filed with the Washington state secretary of state, and will become effective on the date of filing.

(2) An authority is a municipal corporation. Subject to RCW 39.106.040(3), the provisions of a joint municipal utility services agreement, and any limitations imposed pursuant to RCW 39.106.050: (a) An authority may perform or provide any or all of the utility service or services that all of its members, other than tribal government members, perform or provide under applicable law; and (b) in performing or providing those utility services, an authority may exercise any or all of the powers described in RCW 39.106.040(1).

(3) An authority shall be entitled to all the immunities and exemptions that are available to local governmental entities under applicable law, including without limitation the provisions of chapter 4.96 RCW. Notwithstanding this subsection (3), if all of an authority's members are the same type of Washington local government entity, then the immunities and exemptions available to that type of entity shall govern.

(4) Nothing in this chapter shall diminish a member's powers in connection with its provision or management of utility services, or its taxing power with respect to those services, nor does this chapter diminish in any way the authority of local governments to enter into agreements under chapter 39.34 RCW or other applicable law.

(5) Nothing in this chapter shall impair or diminish a valid water right, including rights established under state law and rights established under federal law. [2011 c 258 § 3.]

39.106.040 Corporate powers of authorities. (1) For the purpose of performing or providing utility services, and subject to subsection (3) of this section and RCW 39.106.050, an authority has and is entitled to exercise the following powers:

(a) To sue and be sued, complain and defend, in its corporate name;

(b) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile

thereof, to be impressed or affixed or in any other manner reproduced;

(c) To purchase, take, receive, take by lease, condemn, receive by grant, or otherwise acquire, and to own, hold, improve, use, operate, maintain, add to, extend, and fully control the use of and otherwise deal in and with, real or personal property or property rights, including without limitation water and water rights, or other assets, or any interest therein, wherever situated;

(d) To sell, convey, lease out, exchange, transfer, surplus, and otherwise dispose of all or any part of its property and assets;

(e) To incur liabilities for any of its utility services purposes, to borrow money at such rates of interest as the authority may determine, to issue its bonds, notes, and other obligations, and to pledge any or all of its revenues to the repayment of bonds, notes, and other obligations;

(f) To enter into contracts for any of its utility services purposes with any individual or entity, both public and private, and to enter into intergovernmental agreements with its members and with other public agencies;

(g) To be eligible to apply for and to receive state, federal, and private grants, loans, and assistance that any of its members are eligible to receive in connection with the development, design, acquisition, construction, maintenance, and/or operation of facilities and programs for utility services;

(h) To adopt and alter rules, policies, and guidelines, not inconsistent with this chapter or with other laws of this state, for the administration and regulation of the affairs and assets of the authority;

(i) To obtain insurance, to self-insure, and to participate in pool insurance programs;

(j) To indemnify any officer, director, employee, volunteer, or former officer, employee, or volunteer, or any member, for acts, errors, or omissions performed in the exercise of their duties in the manner approved by the board;

(k) To employ such persons, as public employees, that the board determines are needed to carry out the authority's purposes and to fix wages, salaries, and benefits, and to establish any bond requirements for those employees;

(l) To provide for and pay pensions and participate in pension plans and other benefit plans for any or all of its officers or employees, as public employees;

(m) To determine and impose fees, rates, and charges for its utility services;

(n) Subject to RCW 39.106.050(20), to have a lien for delinquent and unpaid rates and charges for retail connections and retail utility service to the public, together with recording fees and penalties (not exceeding eight percent) determined by the board, including interest (at a rate determined by the board) on such rates, charges, fees, and penalties, against the premises to which such service has been furnished or is available, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments;

(o) To make expenditures to promote and advertise its programs, educate its members, customers, and the general public, and provide and support conservation and other practices in connection with providing utility services;

(p) With the consent of the member within whose geographic boundaries an authority is so acting, to compel all property owners within an area served by a wastewater collection system owned or operated by an authority to connect their private drain and sewer systems with that system, or to participate in and follow the requirements of an inspection and maintenance program for on-site systems, and to pay associated rates and charges, under such terms and conditions, and such penalties, as the board shall prescribe by resolution;

(q) With the consent of the member within whose geographic or service area boundaries an authority is so acting, to create local improvement districts or utility local improvement districts, to impose and collect assessments and to issue bonds and notes, all consistent with the statutes governing local improvement districts or utility local improvement districts applicable to the member that has provided such consent. Notwithstanding this subsection (1)(q), the guaranty fund provisions of chapter 35.54 RCW shall not apply to a local improvement district created by an authority;

(r) To receive contributions or other transfers of real and personal property and property rights, money, other assets, and franchise rights, wherever situated, from its members or from any other person;

(s) To prepare and submit plans relating to utility services on behalf of itself or its members;

(t) To terminate its operations, wind up its affairs, dissolve, and provide for the handling and distribution of its assets and liabilities in a manner consistent with the applicable agreement;

(u) To transfer its assets, rights, obligations, and liabilities to a successor entity, including without limitation a successor authority or municipal corporation;

(v) Subject to subsection (3) of this section, RCW 39.106.050, and applicable law, to have and exercise any other corporate powers capable of being exercised by any of its members in providing utility services.

(2) An authority, as a municipal corporation, is subject to the public records act (chapter 42.56 RCW), the open public meetings act (chapter 42.30 RCW), and the code of ethics for municipal officers (chapter 42.23 RCW), and an authority is subject to audit by the state auditor under chapter 43.09 RCW.

(3) In the exercise of its powers in connection with performing or providing utility services, an authority is subject to the following:

(a) An authority has no power to levy taxes.

(b) An authority has the power of eminent domain as necessary to perform or provide utility services, but only if all of its members, other than tribal government members, have powers of eminent domain. Further, an authority may exercise the power of eminent domain only pursuant to the provisions of Washington law, in the manner and subject to the statutory limitations applicable to one or more of its Washington local government members. If all of its members are the same type of Washington governmental entity, then the statute governing the exercise of eminent domain by that type of entity shall govern. An authority may not exercise the power of eminent domain with respect to property owned by a city, town, county, special purpose district, authority, or

other unit of local government, but may acquire or use such property under mutually agreed upon terms and conditions.

(c) An authority may pledge its revenues in connection with its obligations, and may acquire property or property rights through and subject to the terms of a conditional sales contract, a real estate contract, or a financing contract under chapter 39.94 RCW, or other federal or state financing program. However, an authority must not in any other manner mortgage or provide security interests in its real or personal property or property rights. As a local governmental entity without taxing power, an authority may not issue general obligation bonds. However, an authority may pledge its full faith and credit to the payment of amounts due pursuant to a financing contract under chapter 39.94 RCW or other federal or state financing program.

(d) In order for an authority to provide a particular utility service in a geographical area, one or more of its members must have authority, under applicable law, to provide that utility service in that geographical area.

(e) As a separate municipal corporation, an authority's obligations and liabilities are its own and are not obligations or liabilities of its members except to the extent and in the manner established under the provisions of an agreement or otherwise expressly provided by contract.

(f) Upon its dissolution, after provision is made for an authority's liabilities, remaining assets must be distributed to a successor entity, or to one or more of the members, or to another public body of this state. [2011 c 258 § 4.]

39.106.050 Elements of joint municipal utility services agreements. A joint municipal utility services agreement that forms and governs an authority must include the elements described in this section, together with such other provisions an authority's members deem appropriate. However, the failure of an agreement to include each and every one of the elements described in this section shall not render the agreement invalid. An agreement must:

(1) Identify the members, together with conditions upon which additional members that are providing utility services may join the authority, the conditions upon which members may or must withdraw, including provisions for handling of relevant assets and liabilities upon a withdrawal, and the effect of boundary adjustments of the authority and boundary adjustments between or among members;

(2) State the name of the authority;

(3) Describe the utility services that the authority will provide;

(4) Specify how the number of directors of the authority's board will be determined, and how those directors will be appointed. Each director on the board of an authority must be an elected official of a member. Except as limited by an agreement, an authority's board may exercise the authority's powers;

(5) Describe how votes of the members represented on the authority's board are to be weighted, and set forth any limitations on the exercise of powers of the authority's board, which may include, by way of example, requirements that certain decisions be made by a supermajority of members represented on an authority's board, based on the number of members and/or some other factor or factors, and that certain

decisions be ratified by the legislative authorities of the members;

(6) Describe how the agreement is to be amended;

(7) Describe how the authority's rules may be adopted and amended;

(8) Specify the circumstances under which the authority may be dissolved, and how it may terminate its operations, wind up its affairs, and provide for the handling, assumption, and/or distribution of its assets and liabilities;

(9) List any legally authorized substantive or corporate powers that the authority will not exercise;

(10) Specify under which personnel laws the authority will operate, which may be the personnel laws applicable to any one of its Washington local government members;

(11) Specify under which public works and procurement laws the authority will operate, which may be the public works and procurement laws applicable to any one of its Washington local government members;

(12) Consistent with RCW 39.106.040(3)(b), specify under which Washington eminent domain laws any condemnations by the authority will be subject;

(13) Specify how the treasurer of the authority will be appointed, which may be an officer or employee of the authority, the treasurer or chief finance officer of any Washington local government member, or the treasurer of any Washington county in which any member of the authority is located. However, if the total number of utility customers of all of the members of an authority does not exceed two thousand five hundred, the treasurer of an authority must be either the treasurer of any member or the treasurer of a county in which any member of the authority is located;

(14) Specify under which Washington state statute or statutes surplus property of the authority will be disposed;

(15) Describe how the authority's budgets will be prepared and adopted;

(16) Describe how any assets of members that are transferred to or managed by the authority will be accounted for;

(17) Generally describe the financial obligations of members to the authority;

(18) Describe how rates and charges imposed by the authority, if any, will be determined. An agreement may specify a specific Washington state statute applicable to one or all of its members for the purpose of governing rate-setting criteria applicable to retail customers, if any;

(19) Specify the Washington state statute or statutes under which bonds, notes, and other obligations of the authority will be issued for the purpose of performing or providing utility services, which must be a bond issuance statute applicable to one or more of its members other than a tribal member. If all of its members are the same type of Washington governmental entity, then a Washington state statute or statutes governing the issuance of bonds, notes, and other obligations issued by that type of entity shall govern;

(20) Specify under which Washington state statute or statutes any liens of an authority shall be exercised, which must be statutes applicable to the type or types of utility service for which the lien shall apply. Further, if all of its members are the same type of Washington governmental entity, then the statute or statutes governing that type of entity shall govern;

(21) Include any other provisions deemed necessary and appropriate by the members. [2011 c 258 § 5.]

39.106.060 Authority of members to assist authority and to transfer funds, property, and other assets. For the purpose of assisting the authority in providing utility services, the members of an authority are authorized, with or without payment or other consideration and without submitting the matter to the electors of those members, to lease, convey, transfer, assign, or otherwise make available to an authority any money, real or personal property or property rights, other assets including licenses, water rights (subject to applicable law), other property (whether held by a member's utility or by a member's general government), or franchises or rights thereunder. [2011 c 258 § 6.]

39.106.070 Tax exemptions and preferences. (1) As a municipal corporation, the property of an authority is exempt from taxation.

(2) An authority is entitled to all of the exemptions from or preferences with respect to taxes that are available to any or all of its members, other than a tribal member, in connection with the provision or management of utility services. [2011 c 258 § 7.]

39.106.080 Conversion of existing entities into authorities. (1) Any intergovernmental entity formed under chapter 39.34 RCW or other applicable law may become a joint municipal utility services authority and be entitled to all the powers and privileges available under this chapter, if: (a) The public agencies that are parties to an existing interlocal agreement would otherwise be eligible to form an authority to provide the relevant utility services; (b) the public agencies that are parties to the existing interlocal agreement amend, restate, or replace that interlocal agreement so that it materially complies with the requirements of RCW 39.106.050; (c) the amended, restated, or replacement agreement is filed with the Washington state secretary of state consistent with RCW 39.106.030; and (d) the amended, restated, or replacement agreement expressly provides that all rights and obligations of the entity formerly existing under chapter 39.34 RCW or other applicable law shall thereafter be the obligations of the new authority created under this chapter. Upon compliance with those requirements, the new authority shall be a successor of the former intergovernmental entity for all purposes, and all rights and obligations of the former entity shall transfer to the new authority. Those obligations shall be treated as having been incurred, entered into, or issued by the new authority, and those obligations shall remain in full force and effect and shall continue to be enforceable in accordance with their terms.

(2) If an interlocal agreement under chapter 39.34 RCW or other applicable law relating to utility services includes among its original participants a city or county that does not itself provide or no longer provides utility services, that city or county may continue as a party to the amended, restated, or replacement agreement and shall be treated as a member for all purposes under this chapter. [2011 c 258 § 8.]

39.106.090 Powers conferred by chapter are supplemental. The powers and authority conferred by this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained in this chapter shall be construed as limiting any other powers or authority of any member or any other entity formed under chapter 39.34 RCW or other applicable law. [2011 c 258 § 9.]

Chapter 39.108 RCW

LOCAL INFRASTRUCTURE PROJECT AREAS

Sections

39.108.005	Findings.
39.108.010	Definitions.
39.108.030	Designation of sending areas—Inclusion of agricultural and forest land of long-term commercial significance.
39.108.040	Development rights from agricultural and forest land of long-term commercial significance.
39.108.050	Designation of sending areas—Inclusion of rural zoned lands under certain circumstances.
39.108.060	Determination of total number of transferable development rights for agricultural and forest land of long-term commercial significance and designated rural zoned lands.
39.108.070	Allocation among local governments of transferable development rights from agricultural and forest land of long-term commercial significance and designated rural zoned lands.
39.108.080	Development plan for infrastructure.
39.108.090	Program for transfer of development rights into receiving areas—Requirements.
39.108.100	Development rights available for transfer to receiving cities.
39.108.110	Quantitative and qualitative performance measures—Reporting.
39.108.120	Creating a local infrastructure project area.
39.108.130	Limitations on local infrastructure project areas.
39.108.140	Participating taxing districts.
39.108.150	Allocation of property tax revenues.

39.108.005 Findings. (1) Recognizing that uncoordinated and poorly planned growth poses a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state, the legislature passed the growth management act, chapter 36.70A RCW. The planning goals adopted through the growth management act encourage development in urban areas where public facilities and services exist or can be provided efficiently, conservation of productive forest and agricultural lands, and a reduction of sprawl.

(2) Under RCW 36.70A.090 and 43.362.005 the legislature has encouraged:

(a) The use of innovative land use management techniques, including the transfer of development rights, to meet growth management goals; and

(b) The creation of a regional transfer of development rights marketplace in the central Puget Sound to assist in conserving agricultural and forest land, as well as other lands of state or regional priority.

(3) The legislature finds that:

(a) Local governments are in need of additional resources to provide public infrastructure to meet the needs of a growing population, and that public infrastructure is fundamental to community health, safety, and economic vitality. Investment in public infrastructure in growing urban areas supports growth management goals, encourages the redevelopment of underutilized or blighted urban areas, stimulates business activity and helps create jobs, lowers the cost of

housing, promotes efficient land use, and improves residents' quality of life;

(b) Transferring development rights from agricultural and forest lands to urban areas where public facilities and services exist or can be provided efficiently and cost-effectively will ensure vibrant, economically viable communities. Directing growth to communities where people can live close to where they work or have access to transportation choices will also advance state goals regarding climate change by reducing vehicle miles traveled and by reducing fuel consumption and emissions that contribute to climate change. Directing growth to these communities will further help avoid the impacts of storm water runoff to Puget Sound by avoiding impervious surfaces associated with development in watershed uplands;

(c) A transfer of development rights marketplace is particularly appropriate for conserving agricultural and forest land of long-term commercial significance. Transferring the development rights from these lands of statewide importance to cities will help achieve a specific goal of the growth management act by keeping them in farming and forestry, thereby helping ensure these remain viable industries in counties experiencing population growth. Transferring growth from agricultural and forest land of long-term commercial significance will also reduce costs to the counties that otherwise would be responsible for the provision of infrastructure and services for development on these lands, which are generally further from existing infrastructure and services; and

(d) The state and its residents benefit from investment in public infrastructure that is associated with urban growth facilitated by the transfer of development from agricultural and forest lands of long-term commercial significance. These activities advance multiple state growth management goals and benefit the state and local economies. It is in the public interest to enable local governments to finance such infrastructure investments and to incentivize development right transfers in the central Puget Sound through this chapter. [2011 c 318 § 101.]

Rules—2011 c 318: "The department of commerce may adopt any rules under chapter 34.05 RCW it considers necessary for the administration of this chapter." [2011 c 318 § 901.]

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

(1) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(2) "Eligible county" means any county that borders Puget Sound, that has a population of six hundred thousand or more, and that has an established program for transfer of development rights.

(3) "Employment" means total employment in a county or city, as applicable, estimated by the office of financial management.

(4) "Exchange rate" means an increment of development beyond what base zoning allows that is assigned to a development right by a sponsoring city for use in a receiving area.

(5) "Local infrastructure project area" means the geographic area identified by a sponsoring city under RCW 39.108.120.

(6) "Local infrastructure project financing" means the use of local property tax allocation revenue distributed to the sponsoring city to pay or finance public improvement costs within the local infrastructure project area in accordance with RCW 39.108.150.

(7) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on the property tax allocation revenue value and used for local infrastructure project financing.

(8) "Participating taxing district" means a taxing district that:

(a) Has a local infrastructure project area wholly or partially within the taxing district's geographic boundaries; and

(b) Levies, or has levied on behalf of the taxing district, regular property taxes as defined in this section.

(9) "Population" means the population of a city or county, as applicable, estimated by the office of financial management.

(10) "Property tax allocation revenue base value" means the assessed value of real property located within a local infrastructure project area, less the property tax allocation revenue value.

(11)(a)(i) "Property tax allocation revenue value" means an amount equal to the sponsoring city ratio multiplied by seventy-five percent of any increase in the assessed value of real property in a local infrastructure project area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the local infrastructure project area is created by the sponsoring city;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the local infrastructure project area is created by the sponsoring city;

(C) The cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the local infrastructure project area is created by the sponsoring city.

(ii) Increases in the assessed value of real property resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes an amount equal to the sponsoring city ratio multiplied by seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a local infrastructure

project area has not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when the cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

(12)(a) "Public improvements" means:

(i) Infrastructure improvements within the local infrastructure project area that include:

(A) Street, road, bridge, and rail construction and maintenance;

(B) Water and sewer system construction and improvements;

(C) Sidewalks, streetlights, landscaping, and streetscaping;

(D) Parking, terminal, and dock facilities;

(E) Park and ride facilities of a transit authority and other facilities that support transportation efficient development;

(F) Park facilities, recreational areas, bicycle paths, and environmental remediation;

(G) Storm water and drainage management systems;

(H) Electric, gas, fiber, and other utility infrastructures; and

(ii) Expenditures for facilities and improvements that support affordable housing;

(iii) Providing maintenance and security for common or public areas in the local infrastructure project area; or

(iv) Historic preservation activities authorized under RCW 35.21.395.

(b) Public improvements do not include the acquisition by a sponsoring city of transferable development rights.

(13) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improvements located on publicly owned land that are subject to property taxation.

(14)(a) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (i) Regular property taxes levied by port districts or public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; (ii) regular property taxes levied by the state for the support of common schools under RCW 84.52.065; and (iii) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose.

(b) "Regular property taxes" do not include:

(i) Excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043; and

(ii) Property taxes that are specifically excluded through an interlocal agreement between the sponsoring local govern-

ment and a participating taxing district as set forth in RCW 39.104.060(3).

(15) "Receiving areas," for purposes of this chapter, are those designated lands within local infrastructure project areas in which transferable development rights from sending areas may be used.

(16) "Receiving city" means any incorporated city with population plus employment equal to twenty-two thousand five hundred or greater within an eligible county.

(17) "Receiving city allocated share" means the total number of transferable development rights from agricultural and forest land of long-term commercial significance and rural zoned lands designated under RCW 39.108.050 within the eligible counties allocated to a receiving city under RCW 39.108.070 (1) and (2).

(18) "Sending areas" means those lands within an eligible county that meet conservation criteria as described in RCW 39.108.030 and 39.108.050.

(19) "Sponsoring city" means a receiving city that accepts all or a portion of its receiving city allocated share, adopts a plan for development of infrastructure within one or more proposed local infrastructure project areas in accordance with RCW 39.108.080, and creates one or more local infrastructure project areas, as specified in RCW 39.108.070(4).

(20) "Sponsoring city allocated share" means the total number of transferable development rights a sponsoring city agrees to accept, under RCW 39.108.070(4), from agricultural and forest land of long-term commercial significance and rural zoned lands designated under RCW 39.108.050 within the eligible counties, plus the total number of transferable development rights transferred to the sponsoring city from another receiving city under RCW 39.108.070(5).

(21) "Sponsoring city ratio" means the ratio of the sponsoring city specified portion to the sponsoring city allocated share.

(22) "Sponsoring city specified portion" means the portion of a sponsoring city allocated share which may be used within one or more local infrastructure project areas, as set forth in the sponsoring city's plan for development of infrastructure under RCW 39.108.080.

(23) "Taxing district" means a city or county that levies or has levied on behalf of the taxing district, regular property taxes upon real property located within a local infrastructure project area.

(24) "Transfer of development rights" includes methods for protecting land from development by voluntarily removing the development rights from a sending area and transferring them to one or more receiving areas for the purpose of increasing development density or intensity.

(25) "Transferable development rights" means a right to develop one or more residential units in a sending area that can be sold and transferred. [2011 c 318 § 201.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.030 Designation of sending areas—Inclusion of agricultural and forest land of long-term commercial significance. An eligible county must designate all agricultural and forest land of long-term commercial significance within its jurisdiction as sending areas for conservation under

the eligible county's program for transfer of development rights. The development rights from all such agricultural and forest land of long-term commercial significance within the eligible counties must be available for transfer to receiving cities under this chapter. [2011 c 318 § 301.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.040 Development rights from agricultural and forest land of long-term commercial significance. (1) An eligible county must calculate the number of development rights from agricultural and forest land of long-term commercial significance that are eligible for transfer to receiving areas. An eligible county must determine transferable development rights for allocation purposes in this program by:

(a) Base zoning in effect as of January 1, 2011; or

(b) An allocation other than base zoning as reflected by an eligible county's transfer of development rights program or an interlocal agreement with a receiving city in effect as of January 1, 2011.

(2) The number of transferable development rights includes the development rights from agricultural and forest lands of long-term commercial significance that have been previously issued under the eligible county's program for transfer of development rights, but that have not as yet been utilized to increase density or intensity in a development as of January 1, 2011.

(3) The number of transferable development rights does not include development rights from agricultural and forest lands of long-term commercial significance that have previously been removed or extinguished, such as through an existing conservation easement or mitigation or habitat restoration plan, except when consistent with subsection (2) of this section. [2011 c 318 § 302.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.050 Designation of sending areas—Inclusion of rural zoned lands under certain circumstances. (1) Subject to the requirements of this section, an eligible county may designate a portion of its rural zoned lands as sending areas for conservation under the eligible county's program for transfer of development rights available for transfer to receiving cities under this chapter.

(2) An eligible county may designate rural zoned lands as available for transfer to receiving cities under this chapter only if, and at such time as, fifty percent or more of the total acreage of land classified as agricultural and forest land of long-term commercial significance in the county, as of January 1, 2011, has been protected through either a permanent conservation easement, ownership in fee by the county for land protection or conservation purposes, or ownership in fee by a nongovernmental land conservation organization.

(3) To be designated as available for transfer to receiving cities under this chapter, rural zoned lands must either:

(a) Be identified by the county as top conservation priorities because they:

(i) Provide ecological effectiveness in achieving water resource inventory area goals;

(ii) Provide contiguous habitat protection, are adjacent to already protected habitat areas, or improve ecological function;

(iii) Are of sufficient size and location in the landscape to yield strategic growth management benefits;

(iv) Provide improved access for regional recreational opportunity;

(v) Prevent forest fragmentation or are appropriate for forest management;

(vi) Provide flood protection or reduce flood risk; or

(vii) Have other attributes that meet natural resource preservation program priorities; or

(b) Be identified by the state or in regional conservation plans as highly important to the water quality of Puget Sound.

(4) The portion of rural zoned lands in an eligible county designated as sending areas for conservation under the eligible county's program for transfer of development rights available for transfer to receiving cities under this chapter must not exceed one thousand five hundred development rights. [2011 c 318 § 303.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.060 Determination of total number of transferable development rights for agricultural and forest land of long-term commercial significance and designated rural zoned lands. On or before September 1, 2011, each eligible county must report to the Puget Sound regional council the total number of transferable development rights from agricultural and forest land of long-term commercial significance and designated rural zoned lands within the eligible county that may be available for allocation to receiving cities under this chapter, as determined under RCW 39.108.040 and 39.108.050. [2011 c 318 § 304.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.070 Allocation among local governments of transferable development rights from agricultural and forest land of long-term commercial significance and designated rural zoned lands. (1) The Puget Sound regional council must allocate among receiving cities the total number of development rights reported by eligible counties under RCW 39.108.060. Each receiving city allocated share must be determined by the Puget Sound regional council, in consultation with eligible counties and receiving cities, based on growth targets, determined by established growth management processes, and other relevant factors as determined by the Puget Sound regional council in conjunction with the counties and receiving cities.

(2) The Puget Sound regional council must report to each receiving city its receiving city allocated share on or before March 1, 2012.

(3) The Puget Sound regional council must report each receiving city allocated share to the department of commerce on or before March 1, 2012.

(4) A receiving city may become a sponsoring city by accepting all or a portion of its receiving city allocated share, adopting a plan in accordance with RCW 39.108.080, and creating one or more local infrastructure project areas to pay or finance costs of public improvements.

(5) A receiving city may, by interlocal agreement, transfer all or a portion of its receiving city allocated share to another sponsoring city. The transferred portion of the

receiving city allocated share must be included in the other sponsoring city allocated share. [2011 c 318 § 305.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.080 Development plan for infrastructure. (1) Before adopting an ordinance or resolution creating one or more local infrastructure project areas, a sponsoring city must adopt a plan for development of public infrastructure within one or more proposed local infrastructure project areas sufficient to utilize, on an aggregate basis, a sponsoring city specified portion that is equal to or greater than twenty percent of the sponsoring city allocated share.

(2) The plan must be developed in consultation with the department of transportation and the county where the local infrastructure project area to be created is located, be consistent with any transfer of development rights policies or development regulations adopted by the sponsoring city under RCW 39.108.090, specify the public improvements to be financed using local infrastructure project financing under RCW 39.108.120, estimate the number of any transferable development rights that will be used within the local infrastructure project area or areas and estimate the cost of the public improvements.

(3) A plan adopted under this section may be revised from time to time by the sponsoring city, in consultation with the county where the local infrastructure project area or areas are located, to increase the sponsoring city specified portion. [2011 c 318 § 401.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.090 Program for transfer of development rights into receiving areas—Requirements. (1) Before adopting an ordinance or resolution creating one or more local infrastructure project areas, a sponsoring city must:

(a) Adopt transfer of development rights policies or implement development regulations as required by subsection (2) of this section; or

(b) Make a finding that the sponsoring city will:

(i) Receive its sponsoring city specified portion within one or more local infrastructure project areas; or

(ii) Purchase its sponsoring city specified portion should the sponsoring city not be able to receive its sponsoring city specified portion within one or more local infrastructure project areas such that purchased development rights can be held in reserve by the sponsoring city and used in future development.

(2) Any adoption of transfer of development rights policies or implementation of development regulations must:

(a) Comply with chapter 36.70A RCW;

(b) Designate a receiving area or areas;

(c) Adopt incentives consistent with subsection (4) of this section for developers purchasing transferable development rights;

(d) Establish an exchange rate consistent with subsection (5) of this section; and

(e) Require that the sale of a transferable development right from agricultural or forest land of long-term commercial significance or designated rural zoned lands under RCW 39.108.050 be evidenced by its permanent removal from the

sending site, such as through a conservation easement on the sending site.

(3) Any adoption of transfer of development rights policies or implementation of development regulations must not be based upon a downzone within one or more receiving areas solely to create a market for the transferable development rights.

(4) Developer incentives should be designed to:

(a) Achieve the densities or intensities reasonably likely to result from absorption of the sponsoring city specified portion identified in the plan under RCW 39.108.080;

(b) Include streamlined permitting strategies such as by-right permitting; and

(c) Include streamlined environmental review strategies such as development and substantial environmental review of a subarea plan for a receiving area that benefits projects that use transferable development rights, with adoption as appropriate under RCW 43.21C.420 of optional elements of their comprehensive plan and optional development regulations that apply within the receiving area, adoption as appropriate of a categorical exemption for infill under RCW 43.21C.229 for a receiving area, and adoption as appropriate of a planned action under RCW 43.21C.031 for the receiving area.

(5) Each sponsoring city may determine, at its option, what developer incentives to adopt within its jurisdiction.

(6) Exchange rates should be designed to:

(a) Create a marketplace in which transferable development rights are priced at a level at which sending site landowners are willing to sell and developers are willing to buy transferable development rights;

(b) Achieve the densities or intensities anticipated by the plan adopted under RCW 39.108.080;

(c) Provide for translation to commodities in addition to residential density, such as building height, commercial floor area, parking ratio, impervious surface, parkland and open space, setbacks, and floor area ratio; and

(d) Allow for appropriate exemptions from other land use or building requirements.

(7) A sponsoring city must designate all agricultural and forest land of long-term commercial significance and designated rural zoned lands under RCW 39.108.050 within the eligible counties as available sending areas.

(8) A sponsoring city, in accordance with its existing comprehensive planning and development regulation authority under chapter 36.70A RCW, and in accordance with RCW 36.70A.080, may elect to adopt an optional comprehensive plan element and optional development regulations that apply within one or more local infrastructure project areas under this chapter. [2011 c 318 § 402.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.100 Development rights available for transfer to receiving cities. Only development rights from agricultural and forest land of long-term commercial significance within the eligible counties as determined under RCW 39.108.040, and rural-zoned lands with the eligible counties designated under RCW 39.108.050, may be available for transfer to receiving cities in accordance with this chapter. [2011 c 318 § 403.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.110 Quantitative and qualitative performance measures—Reporting. The eligible counties, in collaboration with sponsoring cities, must provide a report to the department of commerce by March 1st of every other year. The report must contain the following information:

(1) The number of sponsoring cities that have adopted transfer of development rights policies and regulations incorporating transfer of development rights under this chapter, and have an interlocal agreement or have adopted the department of commerce transfer of development rights interlocal terms and conditions rule;

(2) The number of transfer of development rights transactions under this chapter using different types of transfer of development rights mechanisms;

(3) The number of acres under conservation easement under this chapter, broken out by agricultural land, forest land, and rural lands;

(4) The number of transferable development rights transferred from sending areas under this chapter;

(5) The number of transferable development rights transferred from a county into a sponsoring city under this chapter;

(6) Sponsoring city development under this chapter using transferable development rights, including:

(a) The number of total new residential units;

(b) The number of residential units created in receiving areas using transferable development rights transferred from sending areas;

(c) The amount of additional commercial floor area;

(d) The amount of additional building height;

(e) The number of required structured parking spaces reduced, if transferable development rights are specifically converted into reduced structured parking space requirements;

(f) The number of additional parking spaces allowed, if transferable development rights are specifically converted into additional receiving area parking spaces; and

(g) The amount of additional impervious surface allowed, if transferable development rights are specifically converted into receiving area impervious surfaces;

(7) The amount of the local property tax allocation revenues, if any, received in the preceding calendar year by the sponsoring city;

(8) A list of public improvements paid or financed with local infrastructure project financing;

(9) The names of any businesses locating within local infrastructure project areas as a result of the public improvements undertaken by the sponsoring local government and paid or financed in whole or in part with local infrastructure project financing;

(10) The total number of permanent jobs created in the local infrastructure project area as a result of the public improvements undertaken by the sponsoring local government and paid or financed in whole or in part with local infrastructure project financing;

(11) The average wages and benefits received by all employees of businesses locating within the local infrastructure project area as a result of the public improvements undertaken by the sponsoring local government and paid or financed in whole or in part with local infrastructure project financing; and

(12) The date when any indebtedness issued for local infrastructure project financing is expected to be retired. [2011 c 318 § 501.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.120 Creating a local infrastructure project area. (1) Before adopting an ordinance or resolution creating one or more local infrastructure project areas, a sponsoring city must:

(a) Provide notice to the county assessor, county treasurer, and county within the proposed local infrastructure project area of the sponsoring city's intent to create one or more local infrastructure project areas. This notice must be provided at least one hundred eighty days in advance of the public hearing as required by (b) of this subsection;

(b) Hold a public hearing on the proposed formation of the local infrastructure project area.

(2) A sponsoring city may create one or more local infrastructure project areas by ordinance or resolution that:

(a) Describes the proposed public improvements, identified in the plan under RCW 39.108.080, to be financed in each local infrastructure project area;

(b) Describes the boundaries of each local infrastructure project area, subject to the limitations in RCW 39.108.130; and

(c) Provides the date when the use of local property tax allocation revenues will commence and a list of the participating taxing districts.

(3) The sponsoring city must deliver a certified copy of the adopted ordinance or resolution to the county assessor, county treasurer, and each other participating taxing district within which the local infrastructure project area is located. [2011 c 318 § 601.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.130 Limitations on local infrastructure project areas. The designation of any local infrastructure project area is subject to the following limitations:

(1) A local infrastructure project area is limited to contiguous tracts, lots, pieces, or parcels of land without the creation of islands of territory not included in the local infrastructure project area;

(2) The public improvements to be financed with local infrastructure project financing must be located in the local infrastructure project area and must, in the determination of the sponsoring city, further the intent of this chapter;

(3) Local infrastructure project areas created by a sponsoring city may not comprise an area containing more than twenty-five percent of the total assessed value of taxable property within the sponsoring city at the time the local infrastructure project areas are created;

(4) The boundaries of each local infrastructure project area may not overlap and may not be changed during the time period that local infrastructure project financing is used within the local infrastructure project area, as provided under this chapter; and

(5) All local infrastructure project areas created by the sponsoring city must comprise, in the aggregate, an area that the sponsoring city determines (a) is sufficient to use the sponsoring city specified portion, unless the sponsoring city

satisfies its sponsoring city allocated share under RCW 39.108.090(1)(b)(ii), and (b) is no larger than reasonably necessary to use the sponsoring city specified portion in projected future developments. [2011 c 318 § 602.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.140 Participating taxing districts. Participating taxing districts must allow the use of all of their local property tax allocation revenues for local infrastructure project financing. [2011 c 318 § 603.]

Rules—2011 c 318: See note following RCW 39.108.005.

39.108.150 Allocation of property tax revenues. (1) Commencing in the second calendar year following the creation of a local infrastructure project area by a sponsoring city, the county treasurer must distribute receipts from regular taxes imposed on real property located in the local infrastructure project area as follows:

(a) Each participating taxing district and the sponsoring city must receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the property tax allocation revenue base value for that local infrastructure project area in the taxing district; and

(b) The sponsoring city must receive an additional portion of the regular property taxes levied by it and by or for each participating taxing district upon the property tax allocation revenue value within the local infrastructure project area. However, if there is no property tax allocation revenue value, the sponsoring city may not receive any additional regular property taxes under this subsection (1)(b). The sponsoring city may agree to receive less than the full amount of the additional portion of regular property taxes under this subsection (1)(b) as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts must be allocated to the participating taxing districts that levied regular property taxes, or have regular property taxes levied for them, in the local infrastructure project area for collection that year in proportion to their regular tax levy rates for collection that year. The sponsoring city may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the sponsoring local government or its agent under this subsection (1)(b) may only be expended to pay or finance public improvement costs within the local infrastructure project area.

(2) The county assessor must determine the property tax allocation revenue value and property tax allocation revenue base value. This section does not authorize revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW or under other authorized revaluation procedures.

(3)(a) The distribution of local property tax allocation revenue to the sponsoring city must cease on the date that is the earlier of:

(i) The date when local property tax allocation revenues are no longer used or obligated to pay the costs of the public improvements; or

(ii) The final termination date as determined under (b) of this subsection.

(b) The final termination date is determined as follows:

(i) Except as provided otherwise in this subsection (3)(b), if the sponsoring city certifies to the county treasurer that the local property tax threshold level 1 is met, the final termination date is ten years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section;

(ii) If the sponsoring city certifies to the county treasurer that the local property tax threshold level 2 is met at least six months prior to the final termination date under (b)(i) of this subsection (3), the final termination date is fifteen years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section;

(iii) If the sponsoring city certifies to the county treasurer that the local property tax threshold level 3 is met at least six months prior to the final termination date under (b)(ii) of this subsection (3), the final termination date is twenty years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section;

(iv) If the sponsoring city certifies to the county treasurer that the local property tax threshold level 4 is met at least six months prior to the final termination date under (b)(iii) of this subsection (3), the final termination date is twenty-five years after the date of the first distribution of local property tax allocation revenues under subsection (1) of this section.

(4) For purposes of this section:

(a) The "local property tax threshold level 1" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis, uses at least twenty-five percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least twenty-five percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(b) The "local property tax threshold level 2" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis, uses at least fifty percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least fifty percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(c) The "local property tax threshold level 3" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis, uses at least seventy-five percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least seventy-five percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(d) The "local property tax threshold level 4" is met when the sponsoring city has either:

(i) Issued building permits for development within the local infrastructure project area that, on an aggregate basis,

uses at least one hundred percent of the sponsoring city specified portion; or

(ii) Acquired transferable development rights equal to at least one hundred percent of the sponsoring city specified portion for use in the local infrastructure project area or for extinguishment.

(5) Any excess local property tax allocation revenues, and earnings on the revenues, remaining at the time the distribution of local property tax allocation revenue terminates must be returned to the county treasurer and distributed to the participating taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the local infrastructure project area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

(6) The allocation to local infrastructure project financing of that portion of the sponsoring city's and each participating taxing district's regular property taxes levied upon the property tax allocation revenue value within that local infrastructure project area is declared to be a public purpose of and benefit to the sponsoring city and each participating taxing district.

(7) The distribution of local property tax allocation revenues under this section may not affect or be deemed to affect the rate of taxes levied by or within any sponsoring local government and participating taxing district or the consistency of any such levies with the uniformity requirement of Article VII, section 1 of the state Constitution. [2011 c 318 § 701.]

Rules—2011 c 318: See note following RCW 39.108.005.

Title 40

PUBLIC DOCUMENTS, RECORDS, AND PUBLICATIONS

Chapters

40.04 Public documents.

40.06 State publications distribution center.

40.07 Management and control of state publications.

40.10 Microfilming of records to provide continuity of civil government.

40.14 Preservation and destruction of public records.

40.24 Address confidentiality for victims of domestic violence, sexual assault, and stalking.

Chapter 40.04 RCW

PUBLIC DOCUMENTS

Sections

40.04.030 Repealed.

40.04.031 Session laws—Publication, distribution, sale, exchange.

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

40.04.031 Session laws—Publication, distribution, sale, exchange. The statute law committee, after each legislative session, shall distribute, sell, or exchange session laws as required under this section.

(1) The statute law committee, in its discretion, may provide for provision of free copies in digital or print format of

the session laws to selected federal, state, and local agencies. Special consideration shall be given to correctional institutions where internet access is not allowed and to public libraries and other public agencies where internet access is limited or not available.

(2) Surplus paper sets of the session laws shall be sold and delivered by the statute law committee, in which case the price of the paper sets shall be sufficient to cover costs.

All money received from sale of the session laws shall be paid into the statute law committee publications account.

(3) The statute law committee may exchange session law sets for similar laws or legal materials of other states, territories, and governments, and make such other distribution of the sets as in its judgment seems proper.

(4)(a) The statute law committee, in its discretion, may publish the official copy of the session laws in a digital format on the code reviser or legislative web site.

(b) The code reviser shall provide a paper copy of any individual session law or the compiled session laws of any session upon request. The code reviser may charge a minimal fee sufficient to cover costs of printing and mailing the paper copy. [2011 c 156 § 5; 2007 c 456 § 1; 2006 c 46 § 3.]

Purpose—Finding—Intent—2011 c 156: See note following RCW 1.08.080.

Chapter 40.06 RCW

STATE PUBLICATIONS DISTRIBUTION CENTER

Sections

40.06.030 Deposits by state agencies—Exemptions.

40.06.030 Deposits by state agencies—Exemptions.

(1) Every state agency shall promptly submit to the state library copies of published information that are state publications.

(a) For state publications available only in print format, each state agency shall deposit, at a minimum, two copies of each of its publications with the state library. For the purposes of broad public access, state agencies may deposit additional copies with the state library for distribution to additional depository libraries.

(b) For state publications available only in electronic format, each state agency shall deposit one copy of each of its publications with the state library.

(c) For state publications available in both print and electronic format, each state agency shall deposit two print copies and one electronic copy of the publication with the state library.

(2) Annually, each state agency shall provide the state library with a listing of all its publications made available to state government and the public during the preceding year, including those published in electronic form. The secretary of state shall, by rule, establish the annual date by which state agencies must provide the list of its publications to the state library.

(3) In the interest of economy and efficiency, the state librarian may specifically or by general rule exempt a given state publication or class of publications from the requirements of this section in full or in part. [2011 1st sp.s. c 43 § 304; 2006 c 199 § 5; 1977 ex.s. c 232 § 10; 1963 c 233 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—2006 c 199: See note following RCW 27.04.045.

Chapter 40.07 RCW

MANAGEMENT AND CONTROL OF STATE PUBLICATIONS

Sections

40.07.050 Repealed.

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

Chapter 40.10 RCW

MICROFILMING OF RECORDS TO PROVIDE CONTINUITY OF CIVIL GOVERNMENT

Sections

40.10.010 Essential records—Designation—List—Security and protection—Reproduction.

40.10.010 Essential records—Designation—List—Security and protection—Reproduction. In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the state shall designate those public documents which are essential records of his or her office and needed in an emergency and for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the state archivist on forms prescribed by the state archivist. This list shall be reviewed at least annually by the elected or appointed officer to insure its completeness. Any changes or revisions following this review shall be forwarded to the state archivist. Each such elected and appointed officer of state government shall insure that the security of essential records of his or her office is by the most economical means commensurate with adequate protection. Protection of essential records may be by vaulting, planned or natural dispersal of copies, or any other method approved by the state archivist. Reproductions of essential records may be by photo copy, magnetic tape, microfilm, or other method approved by the state archivist. Local government offices may coordinate the protection of their essential records with the state archivist as necessary to provide continuity of local government under emergency conditions. [2011 c 336 § 816; 1982 c 36 § 1; 1973 c 54 § 1; 1963 c 241 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 40.14 RCW

PRESERVATION AND DESTRUCTION OF PUBLIC RECORDS

Sections

40.14.020 Division of archives and records management—State archivist—Powers and duties—Duties of public officials.
40.14.025 Division of archives and records management—Allocation of costs of services—Public records efficiency, preservation, and access account.
40.14.027 Local government archives and records management services—Judgment debtor surcharge.

- 40.14.030 Transfer to state archives—Certified copies, cost—Public disclosure.
- 40.14.040 Records officers—Designation—Powers and duties.
- 40.14.070 Destruction, disposition, donation of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules—Sealed records. (*Effective January 1, 2012.*)
- 40.14.110 Legislative records—Contribution of papers by legislators and employees.
- 40.14.130 Legislative records—Duties of legislative officials, employees and state archivist—Delivery of records—Custody—Availability.
- 40.14.140 Legislative records—Party caucuses to be advised—Information and instructions.

40.14.020 Division of archives and records management—State archivist—Powers and duties—Duties of public officials. All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter. In order to insure the proper management and safeguarding of public records, the division of archives and records management is established in the office of the secretary of state. The state archivist, who shall administer the division and have reasonable access to all public records, wherever kept, for purposes of information, surveying, or cataloguing, shall undertake the following functions, duties, and responsibilities:

- (1) To manage the archives of the state of Washington;
- (2) To centralize the archives of the state of Washington, to make them available for reference and scholarship, and to insure their proper preservation;
- (3) To inspect, inventory, catalog, and arrange retention and transfer schedules on all record files of all state departments and other agencies of state government;
- (4) To insure the maintenance and security of all state public records and to establish safeguards against unauthorized removal or destruction;
- (5) To establish and operate such state record centers as may from time to time be authorized by appropriation, for the purpose of preserving, servicing, screening and protecting all state public records which must be preserved temporarily or permanently, but which need not be retained in office space and equipment;
- (6) To adopt rules under chapter 34.05 RCW:
 - (a) Setting standards for the durability and permanence of public records maintained by state and local agencies;
 - (b) Governing procedures for the creation, maintenance, transmission, cataloging, indexing, storage, or reproduction of photographic, optical, electronic, or other images of public documents or records in a manner consistent with current standards, policies, and procedures of the office of the chief information officer for the acquisition of information technology;
 - (c) Governing the accuracy and durability of, and facilitating access to, photographic, optical, electronic, or other images used as public records; or
 - (d) To carry out any other provision of this chapter;
- (7) To gather and disseminate to interested agencies information on all phases of records management and current practices, methods, procedures, techniques, and devices for

efficient and economical management and preservation of records;

(8) To operate a central microfilming bureau which will microfilm, at cost, records approved for filming by the head of the office of origin and the archivist; to approve microfilming projects undertaken by state departments and all other agencies of state government; and to maintain proper standards for this work;

(9) To maintain necessary facilities for the review of records approved for destruction and for their economical disposition by sale or burning; directly to supervise such destruction of public records as shall be authorized by the terms of this chapter;

(10) To assist and train state and local agencies in the proper methods of creating, maintaining, cataloging, indexing, transmitting, storing, and reproducing photographic, optical, electronic, or other images used as public records;

(11) To solicit, accept, and expend donations as provided in RCW 43.07.037 for the purpose of the archive program. These purposes include, but are not limited to, acquisition, accession, interpretation, and display of archival materials. Donations that do not meet the criteria of the archive program may not be accepted. [2011 1st sp.s. c 43 § 727; 2002 c 358 § 4; 1995 c 326 § 1. Prior: 1991 c 237 § 4; 1991 c 184 § 1; 1986 c 275 § 1; 1983 c 84 § 1; 1981 c 115 § 1; 1957 c 246 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

40.14.025 Division of archives and records management—Allocation of costs of services—Public records efficiency, preservation, and access account. (1) The secretary of state and the director of financial management shall jointly establish a procedure and formula for allocating the costs of services provided by the division of archives and records management to state agencies. The total amount allotted for services to state agencies shall not exceed the appropriation to the archives and records management account during any allotment period.

(2) There is created the public records efficiency, preservation, and access account in the state treasury which shall consist of all fees and charges collected under this section. The account shall be appropriated exclusively for the payment of costs and expenses incurred in the operation of the division of archives and records management as specified by law. [2011 1st sp.s. c 50 § 932; 2003 c 163 § 1; 1996 c 245 § 3; 1991 sp.s. c 13 § 5; 1985 c 57 § 22; 1981 c 115 § 4.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Additional notes found at www.leg.wa.gov

40.14.027 Local government archives and records management services—Judgment debtor surcharge. State agencies shall collect a surcharge of twenty dollars from the judgment debtor upon the satisfaction of a warrant filed in superior court for unpaid taxes or liabilities. The surcharge is imposed on the judgment debtor in the form of a penalty in addition to the filing fee provided in RCW 36.18.012(10). The surcharge revenue shall be transmitted to

the state treasurer for deposit in the public records efficiency, preservation, and access account.

Surcharge revenue deposited in the local government archives account under RCW 40.14.024 shall be expended by the secretary of state exclusively for disaster recovery, essential records protection services, and records management training for local government agencies by the division of archives and records management. The secretary of state shall, with local government representatives, establish a committee to advise the state archivist on the local government archives and records management program. [2011 1st sp.s. c 50 § 933; 2003 c 163 § 4; 2001 c 146 § 4; 1996 c 245 § 4; 1995 c 292 § 17; 1994 c 193 § 2.]

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Findings—1994 c 193: "The legislature finds that: (1) Accountability for and the efficient management of local government records are in the public interest and that compliance with public records management requirements significantly affects the cost of local government administration; (2) the secretary of state is responsible for insuring the preservation of local government archives and may assist local government compliance with public records statutes; (3) as provided in RCW 40.14.025, all archives and records management services provided by the secretary of state are funded exclusively by a schedule of fees and charges established jointly by the secretary of state and the director of financial management; (4) the secretary of state's costs for preserving and providing public access to local government archives and providing records management assistance to local government agencies have been funded by fees paid by state government agencies; (5) local government agencies are responsible for costs associated with managing, protecting, and providing public access to the records in their custody; (6) local government should help fund the secretary of state's local government archives and records management services; (7) the five-dollar fee collected by county clerks for processing warrants for unpaid taxes or liabilities filed by the state of Washington is not sufficient to cover processing costs and is far below filing fees commonly charged for similar types of minor civil actions; (8) a surcharge of twenty dollars would bring the filing fee for warrants for the collection of unpaid taxes and liabilities up to a level comparable to other minor civil filings and should be applied to the support of the secretary of state's local government archives and records services without placing an undue burden on local government; and (9) the process of collecting and transmitting surcharge revenue should not have an undue impact on the operations of the state agencies that file warrants for the collection of unpaid taxes and liabilities or the clerks of superior court who process them." [1994 c 193 § 1.]

Additional notes found at www.leg.wa.gov

40.14.030 Transfer to state archives—Certified copies, cost—Public disclosure. (1) All public records, not required in the current operation of the office where they are made or kept, and all records of every agency, commission, committee, or any other activity of state government which may be abolished or discontinued, shall be transferred to the state archives so that the valuable historical records of the state may be centralized, made more widely available, and insured permanent preservation: PROVIDED, That this section shall have no application to public records approved for destruction under the subsequent provisions of this chapter.

When so transferred, copies of the public records concerned shall be made and certified by the archivist, which certification shall have the same force and effect as though made by the officer originally in charge of them. Fees may be charged to cover the cost of reproduction. In turning over the archives of his or her office, the officer in charge thereof, or his or her successor, thereby loses none of his or her rights of access to them, without charge, whenever necessary.

(2) Records that are confidential, privileged, or exempt from public disclosure under state or federal law while in the possession of the originating agency, commission, board, committee, or other entity of state or local government retain their confidential, privileged, or exempt status after transfer to the state archives unless the archivist, with the concurrence of the originating jurisdiction, determines that the records must be made accessible to the public according to proper and reasonable rules adopted by the secretary of state, in which case the records may be open to inspection and available for copying after the expiration of seventy-five years from creation of the record. If the originating jurisdiction is no longer in existence, the archivist shall make the determination of availability according to such rules. If, while in the possession of the originating agency, commission, board, committee, or other entity, any record is determined to be confidential, privileged, or exempt from public disclosure under state or federal law for a period of less than seventy-five years, then the record, with the concurrence of the originating jurisdiction, must be made accessible to the public upon the expiration of the shorter period of time according to proper and reasonable rules adopted by the secretary of state. [2011 c 336 § 817; 2003 c 305 § 1; 1957 c 246 § 3.]

Columbia River boundary compact, transfer of records to division of archives: RCW 43.58.070.

40.14.040 Records officers—Designation—Powers and duties. Each department or other agency of the state government shall designate a records officer to supervise its records program and to represent the office in all contacts with the records committee, hereinafter created, and the division of archives and records management. The records officer shall:

(1) Coordinate all aspects of the records management program.

(2) Inventory, or manage the inventory, of all public records at least once during a biennium for disposition scheduling and transfer action, in accordance with procedures prescribed by the state archivist and state records committee: PROVIDED, That essential records shall be inventoried and processed in accordance with chapter 40.10 RCW at least annually.

(3) Consult with any other personnel responsible for maintenance of specific records within his or her state organization regarding records retention and transfer recommendations.

(4) Analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the state archivist and state records committee minimal retentions for all copies commensurate with legal, financial, and administrative needs.

(5) Approve all records inventory and destruction requests which are submitted to the state records committee.

(6) Review established records retention schedules at least annually to insure that they are complete and current.

(7) Exercise internal control over the acquisition of filming and file equipment.

If a particular agency or department does not wish to transfer records at a time previously scheduled therefor, the records officer shall, within thirty days, notify the archivist and request a change in such previously set schedule, includ-

ing his or her reasons therefor. [2011 c 336 § 818; 1982 c 36 § 4; 1979 c 151 § 51; 1973 c 54 § 3; 1957 c 246 § 4.]

40.14.070 Destruction, disposition, donation of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules—Sealed records. (Effective January 1, 2012.)

(1)(a) County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

(b) A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

(2)(a) Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(i) The records are six or more years old;

(ii) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(iii) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency.

(b)(i) Records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenders contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020 that are not required in the current operation of the law enforcement agency or for pending judicial proceedings shall, following the expiration of the applicable schedule of the law enforcement agency's retention of the records, be transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval. Upon electronic retention of any document, the association shall be permitted to destroy the paper copy of the document.

(ii) Any sealed record transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval, including records sealed after transfer, shall be electronically retained in such a way that the record is clearly marked as sealed.

(iii) The Washington association of sheriffs and police chiefs shall be permitted to destroy both the paper copy and electronic record of any offender verified as deceased.

(c) Any record transferred to the Washington association of sheriffs and police chiefs pursuant to (b) of this subsection shall be deemed to no longer constitute a public record pursuant to RCW 42.56.010 and shall be exempt from public disclosure. Such records shall be disseminated only to criminal justice agencies as defined in RCW 10.97.030 for the purpose of determining if a sex offender met the criteria of a sexually violent predator as defined in chapter 71.09 RCW and the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420.

Electronic records marked as sealed shall only be accessible by criminal justice agencies as defined in RCW 10.97.030 who would otherwise have access to a sealed paper copy of the document, the end-of-sentence review committee as defined by RCW 72.09.345 for the purpose of fulfilling its duties under RCW 71.09.025 and 9.95.420, and the system administrator for the purposes of system administration and maintenance.

(3) Except as otherwise provided by law, county, municipal, and other local government agencies may, as an alternative to destroying noncurrent public records having no further administrative or legal value, donate the public records to the state library, local library, historical society, genealogical society, or similar society or organization.

Public records may not be donated under this subsection unless:

(a) The records are seventy years old or more;

(b) The local records committee has approved the destruction of the public records; and

(c) The state archivist has determined that the public records have no historic interest. [2011 c 60 § 18; 2005 c 227 § 1; 2003 c 240 § 1; 1999 c 326 § 2; 1995 c 301 § 71; 1982 c 36 § 6; 1973 c 54 § 5; 1971 ex.s. c 10 § 1; 1957 c 246 § 7.]

Effective date—2011 c 60: See RCW 42.17A.919.

Copying, preserving, and indexing of documents recorded by county auditor: RCW 36.22.160 through 36.22.190.

Destruction and reproduction of court records: RCW 36.23.065 through 36.23.070.

40.14.110 Legislative records—Contribution of papers by legislators and employees. Nothing in RCW 40.14.010 and 40.14.100 through 40.14.180 shall prohibit a legislator or legislative employee from contributing his or her personal papers to any private library, public library, or the state archives. The state archivist is authorized to receive papers of legislators and legislative employees and is directed to encourage the donation of such personal records to the state. The state archivist is authorized to establish such guidelines and procedures for the collection of personal papers and correspondence relating to the legislature as he or she sees fit. Legislators and legislative employees are encouraged to contribute their personal papers to the state for preservation. [2011 c 336 § 819; 1971 ex.s. c 102 § 3.]

40.14.130 Legislative records—Duties of legislative officials, employees and state archivist—Delivery of records—Custody—Availability. The legislative committee chair, subcommittee chair, committee member, or employed personnel of the state legislature having possession of legislative records that are not required for the regular performance of official duties shall, within ten days after the adjournment sine die of a regular or special session, deliver all such legislative records to the clerk of the house or the secretary of the senate.

The clerk of the house and the secretary of the senate are charged to include requirements and responsibilities for keeping committee minutes and records as part of their instructions to committee chairs and employees.

The clerk or the secretary, with the assistance of the state archivist, shall classify and arrange the legislative records delivered to the clerk or secretary in a manner that he or she considers best suited to carry out the efficient and economical utilization, maintenance, preservation, and disposition of the records. The clerk or the secretary may deliver to the state archivist all legislative records in his or her possession when such records have been classified and arranged and are no longer needed by either house. The state archivist shall thereafter be custodian of the records so delivered, but shall deliver such records back to either the clerk or secretary upon his or her request.

The chair, member, or employee of a legislative interim committee responsible for maintaining the legislative records of that committee shall, on a scheduled basis agreed upon by the chair, member, or employee of the legislative interim committee, deliver to the clerk or secretary all legislative records in his or her possession, as long as such records are not required for the regular performance of official duties. He or she shall also deliver to the clerk or secretary all records of an interim committee within ten days after the committee ceases to function. [2011 c 336 § 820; 1971 ex.s. c 102 § 5.]

40.14.140 Legislative records—Party caucuses to be advised—Information and instructions. It shall be the duty of the clerk and the secretary to advise the party caucuses in each house concerning the necessity to keep public records. The state archivist or his or her representative shall

work with the clerk and secretary to provide information and instructions on the best method for keeping legislative records. [2011 c 336 § 821; 1971 ex.s. c 102 § 6.]

Chapter 40.24 RCW

ADDRESS CONFIDENTIALITY FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING

Sections

- | | |
|-----------|---|
| 40.24.030 | Address confidentiality program—Application—Certification. |
| 40.24.060 | Voting by program participant—Use of name or address by county auditor. |

40.24.030 Address confidentiality program—Application—Certification. (1)(a) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined in RCW 11.88.010, and (b) any criminal justice participant as defined in RCW 9A.46.020 who is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv), and any family members residing with him or her, may apply to the secretary of state to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

(i) A sworn statement, under penalty of perjury, by the applicant that the applicant has good reason to believe (A) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, trafficking, or stalking and that the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made; or (B) that the applicant, as a criminal justice participant as defined in RCW 9A.46.020, is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv);

(ii) If applicable, a sworn statement, under penalty of perjury, by the applicant, that the applicant has reason to believe they are a victim of (A) domestic violence, sexual assault, or stalking perpetrated by an employee of a law enforcement agency, or (B) threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv);

(iii) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(iv) The residential address and any telephone number where the applicant can be contacted by the secretary of state, which shall not be disclosed because disclosure will increase the risk of (A) domestic violence, sexual assault, trafficking, or stalking, or (B) threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv);

(v) The signature of the applicant and of any individual or representative of any office designated in writing under RCW 40.24.080 who assisted in the preparation of the application, and the date on which the applicant signed the application.

(2) Applications shall be filed with the office of the secretary of state.

(3) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule establish a renewal procedure.

(4) A person who knowingly provides false or incorrect information upon making an application or falsely attests in an application that disclosure of the applicant's address would endanger (a) the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or (b) the safety of any criminal justice participant as defined in RCW 9A.46.020 who is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv), or any family members residing with him or her, shall be punished under RCW 40.16.030 or other applicable statutes. [2011 c 64 § 2. Prior: 2008 c 312 § 3; 2008 c 18 § 2; 2001 c 28 § 2; 1998 c 138 § 2; 1991 c 23 § 3.]

40.24.060 Voting by program participant—Use of name or address by county auditor. The county auditor shall mail a ballot to a program participant qualified and registered at the mailing address provided. Neither the name nor the address of a program participant shall be included in any list of registered voters available to the public. [2011 c 10 § 81; 2008 c 18 § 4; 1991 c 23 § 6.]

Notice to registered poll voters—Elections by mail—2011 c 10: See note following RCW 29A.04.008.

Title 41

PUBLIC EMPLOYMENT, CIVIL SERVICE, AND PENSIONS

Chapters

- 41.04 General provisions.
- 41.05 State health care authority.
- 41.05A Overpayments of assistance and coordination of benefits.
- 41.06 State civil service law.
- 41.07 Central personnel-payroll system.
- 41.26 Law enforcement officers' and firefighters' retirement system.
- 41.32 Teachers' retirement.
- 41.34 Plan 3 retirement system contributions.
- 41.35 Washington school employees' retirement system.
- 41.37 Washington public safety employees' retirement system.
- 41.40 Washington public employees' retirement system.
- 41.45 Actuarial funding of state retirement systems.
- 41.50 Department of retirement systems.
- 41.56 Public employees' collective bargaining.
- 41.58 Public employment labor relations.
- 41.60 State employees' suggestion awards and incentive pay.
- 41.68 Reparations to state employees terminated during World War II.
- 41.80 State collective bargaining.

[2011 RCW Supp—page 744]

Chapter 41.04 RCW GENERAL PROVISIONS

Sections

- 41.04.020 Public employees—Payroll deductions authorized.
- 41.04.340 State employee attendance incentive program—Sick leave records to be kept—Remuneration or benefits for unused sick leave.
- 41.04.385 Child care—Legislative findings—State policy—Responsibilities of director of enterprise services.
- 41.04.395 Disability accommodation revolving fund—Disbursements.
- 41.04.460 Financial planning for retirement—Department of enterprise services to provide information to retirement system members.
- 41.04.665 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies.
- 41.04.670 Leave sharing program—Adoption of rules.
- 41.04.680 Pooled sick leave—Plan establishment—Calculations—Participation—Higher education institutions.
- 41.04.685 Uniformed service shared leave pool—Creation—Administration—Restrictions—Definitions.
- 41.04.720 Employee assistance program—Director of enterprise services—Duties.
- 41.04.770 Supported employment—Implementation.
- 41.04.820 Temporary salary reductions—Exceptions—Implementation.

41.04.020 Public employees—Payroll deductions authorized. Any employee or group of employees of the state of Washington or any of its political subdivisions, or of any institution supported, in whole or in part, by the state or any of its political subdivisions, may authorize the deduction from his or her salaries or wages and payment to another, the amount or amounts of his or her subscription payments or contributions to any person, firm, or corporation administering, furnishing, or providing (1) medical, surgical, and hospital care or either of them, or (2) life insurance or accident and health disability insurance, or (3) any individual retirement account selected by the employee or the employee's spouse established under applicable state or federal law: PROVIDED, That such authorization by said employee or group of employees, shall be first approved by the head of the department, division office or institution of the state or any political subdivision thereof, employing such person or group of persons, and filed with the department of enterprise services; or in the case of political subdivisions of the state of Washington, with the auditor of such political subdivision or the person authorized by law to draw warrants against the funds of said political subdivision. [2011 1st sp.s. c 43 § 471; 1998 c 116 § 1; 1982 c 107 § 1; 1973 c 106 § 15; 1947 c 70 § 1; Rem. Supp. 1947 § 9963-10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Group insurance disability: Chapter 48.21 RCW.
for employees of cities and towns: RCW 35.23.460.
counties: RCW 36.32.400.
life: Chapter 48.24 RCW.

41.04.340 State employee attendance incentive program—Sick leave records to be kept—Remuneration or benefits for unused sick leave. (1) An attendance incentive program is established for all eligible employees. As used in this section the term "eligible employee" means any employee of the state, other than eligible employees of the community and technical colleges and the state board for community and technical colleges identified in RCW

28B.50.553, and teaching and research faculty at the state and regional universities and The Evergreen State College, entitled to accumulate sick leave and for whom accurate sick leave records have been maintained. No employee may receive compensation under this section for any portion of sick leave accumulated at a rate in excess of one day per month. The state and regional universities and The Evergreen State College shall maintain complete and accurate sick leave records for all teaching and research faculty.

(2) In January of the year following any year in which a minimum of sixty days of sick leave is accrued, and each January thereafter, any eligible employee may receive remuneration for unused sick leave accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued sick leave in excess of sixty days. Sick leave for which compensation has been received shall be deducted from accrued sick leave at the rate of four days for every one day's monetary compensation.

From July 1, 2011, through June 29, 2013, the rate of monetary compensation for the purposes of this subsection shall not be reduced by any temporary salary reduction.

(3) At the time of separation from state service due to retirement or death, an eligible employee or the employee's estate may elect to receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days of accrued sick leave. From July 1, 2011, through June 29, 2013, the rate of monetary compensation for the purposes of this subsection shall not be reduced by any temporary salary reduction.

(4) Remuneration or benefits received under this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

(5) Except as provided in subsections (7) through (9) of this section for employees not covered by chapter 41.06 RCW, this section shall be administered, and rules shall be adopted to carry out its purposes, by the human resources director for persons subject to chapter 41.06 RCW: PROVIDED, That determination of classes of eligible employees shall be subject to approval by the office of financial management.

(6) Should the legislature revoke any remuneration or benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

(7) In lieu of remuneration for unused sick leave at retirement as provided in subsection (3) of this section, an agency head or designee may with equivalent funds, provide eligible employees with a benefit plan that provides for reimbursement for medical expenses. This plan shall be implemented only after consultation with affected groups of employees. For eligible employees covered by chapter 41.06 RCW, procedures for the implementation of these plans shall be adopted by the human resources director. For eligible employees exempt from chapter 41.06 RCW, and classified employees who have opted out of coverage of chapter 41.06 RCW as provided in *RCW 41.56.201, implementation procedures shall be adopted by an agency head having jurisdiction over the employees.

(8) Implementing procedures adopted by the human resources director or agency heads shall require that each medical expense plan authorized by subsection (7) of this section apply to all eligible employees in any one of the following groups: (a) Employees in an agency; (b) employees in a major organizational subdivision of an agency; (c) employees at a major operating location of an agency; (d) exempt employees under the jurisdiction of an elected or appointed Washington state executive; (e) employees of the Washington state senate; (f) employees of the Washington state house of representatives; (g) classified employees in a bargaining unit established by the director of personnel; or (h) other group of employees defined by an agency head that is not designed to provide an individual-employee choice regarding participation in a medical expense plan. However, medical expense plans for eligible employees in any of the groups under (a) through (h) of this subsection who are covered by a collective bargaining agreement shall be implemented only by written agreement with the bargaining unit's exclusive representative and a separate medical expense plan may be provided for unrepresented employees.

(9) Medical expense plans authorized by subsection (7) of this section must require as a condition of participation in the plan that employees in the group affected by the plan sign an agreement with the employer. The agreement must include a provision to hold the employer harmless should the United States government find that the employer or the employee is in debt to the United States as a result of the employee not paying income taxes due on the equivalent funds placed into the plan, or as a result of the employer not withholding or deducting a tax, assessment, or other payment on the funds as required by federal law. The agreement must also include a provision that requires an eligible employee to forfeit remuneration under subsection (3) of this section if the employee belongs to a group that has been designated to participate in the medical expense plan permitted under this section and the employee refuses to execute the required agreement. [2011 1st sp.s. c 43 § 432; 2011 1st sp.s. c 39 § 12; 2002 c 354 § 227. Prior: 1998 c 254 § 1; 1998 c 116 § 2; 1997 c 232 § 2; 1993 c 281 § 17; 1991 c 249 § 1; 1990 c 162 § 1; 1980 c 182 § 1; 1979 ex.s. c 150 § 1.]

Reviser's note: *(1) RCW 41.56.201 was repealed by 2002 c 354 § 403, effective July 1, 2005.

(2) This section was amended by 2011 1st sp.s. c 39 § 12 and by 2011 1st sp.s. c 43 § 432, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Additional notes found at www.leg.wa.gov

41.04.385 Child care—Legislative findings—State policy—Responsibilities of director of enterprise services. The legislature finds that (1) demographic, economic, and social trends underlie a critical and increasing demand for child care in the state of Washington; (2) working parents and their children benefit when the employees' child care needs have been resolved; (3) the state of Washington should serve

as a model employer by creating a supportive atmosphere, to the extent feasible, in which its employees may meet their child care needs; and (4) the state of Washington should encourage the development of partnerships between state agencies, state employees, state employee labor organizations, and private employers to expand the availability of affordable quality child care. The legislature finds further that resolving employee child care concerns not only benefits the employees and their children, but may benefit the employer by reducing absenteeism, increasing employee productivity, improving morale, and enhancing the employer's position in recruiting and retaining employees. Therefore, the legislature declares that it is the policy of the state of Washington to assist state employees by creating a supportive atmosphere in which they may meet their child care needs. Policies and procedures for state agencies to address employee child care needs will be the responsibility of the director of enterprise services in consultation with the director of the department of early learning and state employee representatives. [2011 1st sp.s. c 43 § 433; 2006 c 265 § 201; 2005 c 490 § 9; 2002 c 354 § 236; 1993 c 194 § 5; 1986 c 135 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Effective date—2005 c 490: See note following RCW 43.215.540.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

41.04.395 Disability accommodation revolving fund—Disbursements. (1) The disability accommodation revolving fund is created in the custody of the state treasurer. Disbursements from the fund shall be on authorization of the director of financial management or the director's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. The fund shall be used exclusively by state agencies to accommodate the unanticipated job site or equipment needs of persons of disability in state employ.

(2) The director of financial management or the director's designee shall consult with the governor's committee on disability issues and employment regarding requests for disbursements from the disability accommodation revolving fund. The department shall establish application procedures, adopt criteria, and provide technical assistance to users of the fund.

(3) Agencies that receive moneys from the disability accommodation revolving fund shall return to the fund the amount received from the fund by no later than the end of the first month of the following fiscal biennium. [2011 1st sp.s. c 43 § 434; 1994 sp.s. c 9 § 801; 1987 c 9 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—1987 c 9: "The legislature recognizes that persons of disability have faced unfair discrimination in employment. Equal opportunity for persons of disability often necessitate job site changes and equipment purchases. It is the intent of the legislature to remove a potential barrier to employment of persons of disability by giving state agencies, including institutions of higher education, the ability to accommodate the job site and equipment needs of persons of disability without the delay of waiting for an appropriation from the legislature." [1987 c 9 § 1.]

[2011 RCW Supp—page 746]

Additional notes found at www.leg.wa.gov

41.04.460 Financial planning for retirement—Department of enterprise services to provide information to retirement system members. The department of enterprise services, through the combined benefits communication project, shall prepare information encouraging individual financial planning for retirement and describing the potential consequences of early retirement, including members' assumption of health insurance costs, members' receipt of reduced retirement benefits, and the increased period of time before members will become eligible for cost-of-living adjustments. The department of retirement systems shall distribute the information to members who are eligible to retire under the provisions of chapter 234, Laws of 1992. Prior to retiring, such members who elect to retire shall sign a statement acknowledging their receipt and understanding of the information. [2011 1st sp.s. c 43 § 472; 1992 c 234 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.04.665 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies. (1) An agency head may permit an employee to receive leave under this section if:

(a)(i) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(ii) The employee has been called to service in the uniformed services;

(iii) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has needed skills to assist in responding to the emergency or its aftermath and volunteers his or her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

(iv) The employee is a victim of domestic violence, sexual assault, or stalking; or

(v) During the 2009-2011 fiscal biennium only, the employee is eligible to use leave in lieu of temporary layoff under section 3(5), chapter 32, Laws of 2010 1st sp. sess.;

(b) The illness, injury, impairment, condition, call to service, emergency volunteer service, or consequence of domestic violence, sexual assault, temporary layoff under section 3(5), chapter 32, Laws of 2010 1st sp. sess., or stalking has caused, or is likely to cause, the employee to:

(i) Go on leave without pay status; or

(ii) Terminate state employment;

(c) The employee's absence and the use of shared leave are justified;

(d) The employee has depleted or will shortly deplete his or her:

(i) Annual leave and sick leave reserves if he or she qualifies under (a)(i) of this subsection;

(ii) Annual leave and paid military leave allowed under RCW 38.40.060 if he or she qualifies under (a)(ii) of this subsection; or

(iii) Annual leave if he or she qualifies under (a)(iii), (iv), or (v) of this subsection;

(e) The employee has abided by agency rules regarding:

(i) Sick leave use if he or she qualifies under (a)(i) or (iv) of this subsection; or

(ii) Military leave if he or she qualifies under (a)(ii) of this subsection; and

(f) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if he or she qualifies under (a)(i) of this subsection.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than five hundred twenty-two days of leave, except that, a supervisor may authorize leave in excess of five hundred twenty-two days in extraordinary circumstances for an employee qualifying for the shared leave program because he or she is suffering from an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature. Shared leave received under the uniformed service shared leave pool in RCW 41.04.685 is not included in this total.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of one hundred seventy-six hours of sick leave after the transfer.

(c) An employee may transfer, under the provisions of this section relating to the transfer of leave, all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, or as such holidays are provided to employees by agreement with a school district's board of directors if the leave transferred under this subsection does not exceed the amount of time provided for personal holidays under RCW 1.16.050.

(4) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than twenty-two days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer that would result in his or her sick leave account going below twenty-two days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(2) or

28A.310.240(1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency.

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred or for any other qualifying condition. Before the agency head makes a determination to return unused leave in connection with an illness or injury, or any other qualifying condition, he or she must receive from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used.

(11) The human resources director may adopt rules as necessary to implement subsection (2) of this section. [2011 1st sp.s. c 43 § 435. Prior: 2010 1st sp.s. c 32 § 10; 2010 c 168 § 1; 2008 c 36 § 3; prior: 2007 c 454 § 1; 2007 c 25 § 2;

2003 1st sp.s. c 12 § 3; 1999 c 25 § 1; 1996 c 176 § 1; 1990 c 23 § 2; 1989 c 93 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Effective date—2010 c 168: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 2010]." [2010 c 168 § 2.]

Effective date—2008 c 36: See note following RCW 41.04.655.

Severability—Effective date—2007 c 25: See notes following RCW 41.04.685.

Effective date—2003 1st sp.s. c 12: See note following RCW 41.04.655.

Additional notes found at www.leg.wa.gov

41.04.670 Leave sharing program—Adoption of rules. The office of financial management and other personnel authorities shall each adopt rules applicable to employees under their respective jurisdictions: (1) Establishing appropriate parameters for the program which are consistent with the provisions of RCW 41.04.650 through 41.04.665; (2) providing for equivalent treatment of employees between their respective jurisdictions and allowing transfers of leave in accordance with RCW 41.04.665(5); (3) establishing procedures to ensure that the program does not significantly increase the cost of providing leave; and (4) providing for the administration of the program and providing for maintenance and collection of sufficient information on the program to allow a thorough legislative review. [2011 1st sp.s. c 43 § 436; 1993 c 281 § 18; 1990 c 23 § 3; 1989 c 93 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.04.680 Pooled sick leave—Plan establishment—Calculations—Participation—Higher education institutions. The office of financial management and other personnel authorities shall adopt rules or policies governing the accumulation and use of sick leave for state agency and department employees, expressly for the establishment of a plan allowing participating employees to pool sick leave and allowing any sick leave thus pooled to be used by any participating employee who has used all of the sick leave, annual leave, and compensatory leave that has been personally accrued by him or her. Each department or agency of the state may allow employees to participate in a sick leave pool established by the office of financial management and other personnel authorities.

(1) For purposes of calculating maximum sick leave that may be donated or received by any one employee, pooled sick leave:

(a) Is counted and converted in the same manner as sick leave under the Washington state leave sharing program as provided in this chapter; and

(b) Does not create a right to sick leave in addition to the amount that may be donated or received under the Washington state leave sharing program as provided in this chapter.

[2011 RCW Supp—page 748]

(2) The office of financial management and other personnel authorities, except the personnel authorities for higher education institutions, shall adopt rules which provide:

(a) That employees are eligible to participate in the sick leave pool after one year of employment with the state or agency of the state if the employee has accrued a minimum amount of unused sick leave, to be established by rule;

(b) That participation in the sick leave pool shall, at all times, be voluntary on the part of the employees;

(c) That any sick leave pooled shall be removed from the personally accumulated sick leave balance of the employee contributing the leave;

(d) That any sick leave in the pool that is used by a participating employee may be used only for the employee's personal illness, accident, or injury;

(e) That a participating employee is not eligible to use sick leave accumulated in the pool until all of his or her personally accrued sick, annual, and compensatory leave has been used;

(f) A maximum number of days of sick leave in the pool that any one employee may use;

(g) That a participating employee who uses sick leave from the pool is not required to recontribute such sick leave to the pool, except as otherwise provided in this section;

(h) That an employee who cancels his or her membership in the sick leave pool is not eligible to withdraw the days of sick leave contributed by that employee to the pool;

(i) That an employee who transfers from one position in state government to another position in state government may transfer from one pool to another if the eligibility criteria of the pools are comparable and the administrators of the pools have agreed on a formula for transfer of credits;

(j) That alleged abuse of the use of the sick leave pool shall be investigated, and, on a finding of wrongdoing, the employee shall repay all of the sick leave credits drawn from the sick leave pool and shall be subject to such other disciplinary action as is determined by the agency head;

(k) That sick leave credits may be drawn from the sick leave pool by a part-time employee on a pro rata basis; and

(l) That each department or agency shall maintain accurate and reliable records showing the amount of sick leave which has been accumulated and is unused by employees, in accordance with guidelines established by the department of personnel.

(3) Personnel authorities for higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions. [2011 1st sp.s. c 43 § 437; 2006 c 356 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2006 c 356: "This act takes effect July 1, 2007." [2006 c 356 § 2.]

41.04.685 Uniformed service shared leave pool—Creation—Administration—Restrictions—Definitions.

(1) The uniformed service shared leave pool is created to allow employees to donate leave to be used as shared leave for any employee who has been called to service in the uniformed services and who meets the requirements of RCW 41.04.665. Participation in the pool shall, at all times, be voluntary on the part of the employee. The military department,

in consultation with the office of financial management, shall administer the uniformed service shared leave pool.

(2) Employees as defined in subsection (10) of this section who are eligible to donate leave under RCW 41.04.665 may donate leave to the uniformed service shared leave pool.

(3) An employee as defined in subsection (10) of this section who has been called to service in the uniformed services and is eligible for shared leave under RCW 41.04.665 may request shared leave from the uniformed service shared leave pool.

(4) It shall be the responsibility of the employee who has been called to service to provide an earnings statement verifying military salary, orders of service, and notification of a change in orders of service or military salary.

(5) Shared leave under this section may not be granted unless the pool has a sufficient balance to fund the requested shared leave for the expected term of service.

(6) Shared leave paid under this section, in combination with military salary, shall not exceed the level of the employee's state monthly salary.

(7) Any leave donated shall be removed from the personally accumulated leave balance of the employee donating the leave.

(8) An employee who receives shared leave from the pool is not required to retribute such leave to the pool, except as otherwise provided in this section.

(9) Leave that may be donated or received by any one employee shall be calculated as in RCW 41.04.665.

(10) As used in this section:

(a) "Employee" has the meaning provided in RCW 41.04.655, except that "employee" as used in this section does not include employees of school districts and educational service districts.

(b) "Service in the uniformed services" has the meaning provided in RCW 41.04.655.

(c) "Military salary" includes base, specialty, and other pay, but does not include allowances such as the basic allowance for housing.

(d) "Monthly salary" includes monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. "Monthly salary" does not include:

- (i) Overtime pay;
- (ii) Call back pay;
- (iii) Standby pay; or
- (iv) Performance bonuses.

(11) The office of financial management, in consultation with the military department, shall adopt rules and policies governing the donation and use of shared leave from the uniformed service shared leave pool, including definitions of pay and allowances and guidelines for agencies to use in recordkeeping concerning shared leave.

(12) Agencies shall investigate any alleged abuse of the uniformed service shared leave pool and on a finding of wrongdoing, the employee may be required to repay all of the shared leave received from the uniformed service shared leave pool.

(13) Higher education institutions shall adopt policies consistent with the needs of the employees under their respective jurisdictions. [2011 1st sp.s. c 43 § 438; 2007 c 25 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—2007 c 25: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 25 § 4.]

Effective date—2007 c 25: "This act takes effect October 1, 2007." [2007 c 25 § 5.]

41.04.720 Employee assistance program—Director of enterprise services—Duties. The director of enterprise services shall:

(1) Administer the state employee assistance program to assist employees who have personal problems that adversely affect their job performance or have the potential of doing so;

(2) Develop policies, procedures, and activities for the program;

(3) Encourage and promote the voluntary use of the employee assistance program by increasing employee awareness and disseminating educational materials;

(4) Provide technical assistance and training to agencies on how to use the employee assistance program;

(5) Assist and encourage supervisors to identify and refer employees with problems that impair their performance by incorporating proper use of the program in management training, management performance criteria, ongoing communication with agencies, and other appropriate means;

(6) Offer substance abuse prevention and awareness activities to be provided through the employee assistance program and the state employee wellness program;

(7) Monitor and evaluate the effectiveness of the program, including the collection, analysis, and publication of relevant statistical information; and

(8) Consult with state agencies, institutions of higher education, and employee organizations in carrying out the purposes of RCW 41.04.700 through 41.04.730. [2011 1st sp.s. c 43 § 439; 1990 c 60 § 303.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.04.770 Supported employment—Implementation.

The department of social and health services and the department of enterprise services shall, after consultation with supported employment provider associations and other interested parties, encourage, educate, and assist state agencies in implementing supported employment programs. The department of enterprise services shall provide human resources technical assistance to agencies implementing supported employment programs. [2011 1st sp.s. c 43 § 440; 1997 c 287 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Finding—1997 c 287: See note following RCW 41.04.750.

41.04.820 Temporary salary reductions—Exceptions—Implementation.

(1) Except as provided in this section, from July 1, 2011, through June 29, 2013, base salaries are reduced three percent for all state employees of the executive, legislative, and judicial branches, including those employees in the Washington management service and

employees not subject to the provisions of chapter 41.06 RCW.

(2) The following employees of the executive, legislative, and judicial branches are not subject to subsection (1) of this section:

(a) Elected officials whose salaries are set by the commission on salaries for elected officials;

(b) Employees at state institutions of higher education;

(c) Certificated employees of the state school for the blind and the center for childhood deafness and hearing loss;

(d) Commissioned officers of the Washington state patrol represented by the state patrol troopers association and the Washington state patrol lieutenants association;

(e) Represented ferry workers of the Washington state department of transportation; and

(f) Employees whose monthly full-time equivalent salary is less than two thousand five hundred dollars per month.

(3) Except as provided in subsection (4) of this section, if an employee subject to the three percent salary reduction under subsection (1) of this section is entitled to leave, the employee will receive temporary salary reduction leave of up to five and two-tenths hours per month. The director of the department of personnel shall adopt rules governing the accrual and use of temporary salary reduction leave for non-represented employees. For represented employees, the accrual and use of temporary salary reduction leave shall be in accordance with the provisions of the collective bargaining agreements.

(4) If provisions of collective bargaining agreements prevent the implementation of subsection (1) of this section, agencies of the executive, legislative, and judicial branches shall achieve a three percent salary reduction for each employee through employee leave without pay, mandatory and voluntary temporary layoffs, reduced work hours, or other actions consistent with collective bargaining agreements. This subsection does not prohibit an agency from granting temporary salary reduction leave for employees entitled to leave in accordance with subsection (3) of this section.

(5) Subsection (2) of this section does not prohibit employers of the executive, legislative, and judicial branches from implementing a salary reduction for employees exempted under subsection (2) of this section. Employers of the executive, legislative, and judicial branches are encouraged to implement a salary reduction for employees exempted under subsection (2) of this section, except for those employees whose monthly full-time equivalent salary is less than two thousand five hundred dollars per month.

(6) Subsection (2) of this section does not prohibit elected officials whose salaries are set by the commission on salaries for elected officials to voluntarily agree to a reduction in salary and elected officials are encouraged to take such action.

(7) This section does not prohibit a state agency or institution during the 2011-2013 fiscal biennium from instituting reduced work hours, mandatory or voluntary leave without pay, reductions in salaries, or temporary layoffs as an integral part of the employer's expenditure reduction efforts, as certified by the employer. This subsection must be implemented consistent with collective bargaining agreements. [2011 1st sp.s. c 39 § 1.]

Effective date—2011 1st sp.s. c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 39 § 15.]

Chapter 41.05 RCW

STATE HEALTH CARE AUTHORITY

Sections

41.05.011	Definitions.
41.05.015	Medical director—Appointment of personnel.
41.05.019	Direct patient-provider primary care practices—Plan.
41.05.021	State health care authority—Director—Cost control and delivery strategies—Health information technology—Managed competition—Rules.
41.05.036	Health information—Definitions.
41.05.037	Nurse hotline, when funded.
41.05.065	Public employees' benefits board—Duties—Eligibility—Definitions—Penalties.
41.05.140	Payment of claims—Self-insurance—Insurance reserve funds created.
41.05.175	Prescribed, self-administered anticancer medication.
41.05.670	Chronic care management incentives—Provider reimbursement methods.
41.05.680	Report—Chronic care management.

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

(1) "Authority" means the Washington state health care authority.

(2) "Board" means the public employees' benefits board established under RCW 41.05.055.

(3) "Dependent care assistance program" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 129 or other sections of the internal revenue code.

(4) "Director" means the director of the authority.

(5) "Emergency service personnel killed in the line of duty" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

(6) "Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021(1)(g); (b) employees of employee organizations representing state civil service employees, at

the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; and (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (f) and (g). "Employee" does not include: Adult family homeowners; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

(7) "Employer" means the state of Washington.

(8) "Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; and a tribal government covered by this chapter.

(9) "Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

(10) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(11) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(12) "Medical flexible spending arrangement" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(13) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the salary reduction plan.

(14) "Plan year" means the time period established by the authority.

(15) "Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(16) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiv-

ing a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32, 41.35, or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35, or 41.40 RCW.

(17) "Salary" means a state employee's monthly salary or wages.

(18) "Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(19) "Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

(20) "Separated employees" means persons who separate from employment with an employer as defined in:

(a) RCW 41.32.010(17) on or after July 1, 1996; or

(b) RCW 41.35.010 on or after September 1, 2000; or

(c) RCW 41.40.010 on or after March 1, 2002;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(33), the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010, or the public employees' retirement system plan 3 as defined in RCW 41.40.010.

(21) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(22) "Tribal government" means an Indian tribal government as defined in section 3(32) of the employee retirement income security act of 1974, as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state. [2011 1st sp.s. c 15 § 54; 2009 c 537 § 3; 2008 c 229 § 2. Prior: 2007 c 488 § 2; 2007 c 114 § 2; 2005 c 143 § 1; 2001 c 165 § 2; prior: 2000 c 247 § 604; 2000 c 230 § 3; 1998 c 341 § 706; 1996 c 39 § 21; 1995 1st sp.s. c 6 § 2; 1994 c 153 § 2; prior: 1993 c 492 § 214; 1993 c 386 § 5; 1990 c 222 § 2; 1988 c 107 § 3.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2009 c 537: See note following RCW 41.05.008.

Effective date—2008 c 229: See note following RCW 41.05.295.

Short title—2007 c 488: See note following RCW 43.43.285.

Intent—2007 c 114: "Consistent with the centennial accord, the new millennium agreement, related treaties, and federal and state law, it is the intent of the legislature to authorize tribal governments to participate in public employees' benefits board programs to the same extent that counties, municipalities, and other political subdivisions of the state are authorized to do so." [2007 c 114 § 1.]

Effective date—2007 c 114: "This act takes effect January 1, 2009." [2007 c 114 § 8.]

Effective date—2001 c 165 § 2: "Section 2 of this act takes effect March 1, 2002." [2001 c 165 § 5.]

Effective date—Application—2001 c 165: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and except for section 2 of this act takes effect immediately [May 7, 2001]. This act applies to all surviving spouses and dependent children of (1) emergency service personnel and (2) members of the law enforcement officers' and firefighters' retirement system plan 2, killed in the line of duty." [2006 c 345 § 2; 2001 c 165 § 6.]

Reviser's note: Contractual right not granted—2006 c 345: See note following RCW 41.26.510.

Intent—1994 c 153: "It is the intent of the legislature to increase access to health insurance for retired and disabled state and school district employees and to increase equity between state and school employees and between state and school retirees." [1994 c 153 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.015 Medical director—Appointment of personnel. The director shall designate a medical director who is licensed under chapter 18.57 or 18.71 RCW. The director shall also appoint such professional personnel and other assistants and employees, including professional medical screeners, as may be reasonably necessary to carry out the provisions of this chapter and chapter 74.09 RCW. The medical screeners must be supervised by one or more physicians whom the director or the director's designee shall appoint. [2011 1st sp.s. c 15 § 55; 2000 c 5 § 16.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Additional notes found at www.leg.wa.gov

41.05.019 Direct patient-provider primary care practices—Plan. (1) The Washington state health care authority shall develop a plan to incorporate direct patient-provider primary care practices as provided in chapter 48.150 RCW into one or more of the choices of health benefit programs made available to participants in the public employees' benefits board system beginning no later than the open enrollment period beginning November 1, 2012.

(2) The plan will be developed in consultation with the board and interested parties, will identify statutory barriers to implementation, and will include proposed legislation to address those barriers and implement the plan. The plan will be submitted to the board and to the house of representatives and senate health care committees by December 1, 2011. [2011 1st sp.s. c 8 § 2.]

41.05.021 State health care authority—Director—Cost control and delivery strategies—Health information technology—Managed competition—Rules. (1) The Washington state health care authority is created within the

executive branch. The authority shall have a director appointed by the governor, with the consent of the senate. The director shall serve at the pleasure of the governor. The director may employ a deputy director, and such assistant directors and special assistants as may be needed to administer the authority, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The director may delegate any power or duty vested in him or her by law, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. The primary duties of the authority shall be to: Administer state employees' insurance benefits and retired or disabled school employees' insurance benefits; administer the basic health plan pursuant to chapter 70.47 RCW; administer the children's health program pursuant to chapter 74.09 RCW; study state-purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services; and administer grants that further the mission and goals of the authority. The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state-purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis;

(v) Development of data systems to obtain utilization data from state-purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031; and

(vi) In collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(A) Use evidence-based medicine principles to develop common performance measures and implement financial

incentives in contracts with insuring entities, health care facilities, and providers that:

(I) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(II) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(B) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020(4), integrated delivery systems, and providers that:

(I) Facilitate diagnosis or treatment;

(II) Reduce unnecessary duplication of medical tests;

(III) Promote efficient electronic physician order entry;

(IV) Increase access to health information for consumers and their providers; and

(V) Improve health outcomes;

(C) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005;

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205 and (g) of this subsection, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To review and approve or deny the application when the governing body of a tribal government applies to transfer their employees to an insurance or self-insurance program administered under this chapter. In the event of an employee transfer pursuant to this subsection (1)(f), members of the governing body are eligible to be included in such a transfer if the members are authorized by the tribal government to participate in the insurance program being transferred from and subject to payment by the members of all costs of insurance for the members. The authority shall: (i) Establish the conditions for participation; (ii) have the sole right to reject the application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050. Approval of the application by the authority transfers the employees and dependents involved to the insurance, self-insurance, or health care program approved by the authority;

(g) To ensure the continued status of the employee insurance or self-insurance programs administered under this chapter as a governmental plan under section 3(32) of the employee retirement income security act of 1974, as amended, the authority shall limit the participation of employees of a county, municipal, school district, educational service district, or other political subdivision, or a tribal government, including providing for the participation

of those employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities;

(h) To establish billing procedures and collect funds from school districts in a way that minimizes the administrative burden on districts;

(i) To publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority and the estimated cost if school districts and educational service district employees were enrolled;

(j) To apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and make arrangements as to the use of these receipts to implement initiatives and strategies developed under this section;

(k) To issue, distribute, and administer grants that further the mission and goals of the authority;

(l) To adopt rules consistent with this chapter as described in RCW 41.05.160 including, but not limited to:

(i) Setting forth the criteria established by the board under RCW 41.05.065 for determining whether an employee is eligible for benefits;

(ii) Establishing an appeal process in accordance with chapter 34.05 RCW by which an employee may appeal an eligibility determination;

(iii) Establishing a process to assure that the eligibility determinations of an employing agency comply with the criteria under this chapter, including the imposition of penalties as may be authorized by the board;

(m)(i) To administer the medical services programs established under chapter 74.09 RCW as the designated single state agency for purposes of Title XIX of the federal social security act;

(ii) To administer the state children's health insurance program under chapter 74.09 RCW for purposes of Title XXI of the federal social security act;

(iii) To enter into agreements with the department of social and health services for administration of medical care services programs under Titles XIX and XXI of the social security act. The agreements shall establish the division of responsibilities between the authority and the department with respect to mental health, chemical dependency, and long-term care services, including services for persons with developmental disabilities. The agreements shall be revised as necessary, to comply with the final implementation plan adopted under section 116, chapter 15, Laws of 2011 1st sp. sess.;

(iv) To adopt rules to carry out the purposes of chapter 74.09 RCW;

(v) To appoint such advisory committees or councils as may be required by any federal statute or regulation as a condition to the receipt of federal funds by the authority. The director may appoint statewide committees or councils in the following subject areas: (A) Health facilities; (B) children and youth services; (C) blind services; (D) medical and health care; (E) drug abuse and alcoholism; (F) rehabilitative services; and (G) such other subject matters as are or come within the authority's responsibilities. The statewide councils shall have representation from both major political parties and shall have substantial consumer representation. Such

committees or councils shall be constituted as required by federal law or as the director in his or her discretion may determine. The members of the committees or councils shall hold office for three years except in the case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term for which the vacancy occurs. No member shall serve more than two consecutive terms. Members of such state advisory committees or councils may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) On and after January 1, 1996, the public employees' benefits board may implement strategies to promote managed competition among employee health benefit plans. Strategies may include but are not limited to:

- (a) Standardizing the benefit package;
- (b) Soliciting competitive bids for the benefit package;
- (c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;
- (d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans statewide, and quality of health services. The health care authority shall also advise on the value of administering a benchmark employer-managed plan to promote competition among managed care plans. [2011 1st sp.s. c 15 § 56; 2009 c 537 § 4. Prior: 2007 c 274 § 1; 2007 c 114 § 3; 2006 c 103 § 2; 2005 c 446 § 1; 2002 c 142 § 1; 1999 c 372 § 4; 1997 c 274 § 1; 1995 1st sp.s. c 6 § 7; 1994 c 309 § 1; prior: 1993 c 492 § 215; 1993 c 386 § 6; 1990 c 222 § 3; 1988 c 107 § 4.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Effective date—2009 c 537: See note following RCW 41.05.008.

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Intent—2006 c 103: "(1) The legislature recognizes that improvements in the quality of health care lead to better health care outcomes for the residents of Washington state and contain health care costs. The improvements are facilitated by the adoption of electronic medical records and other health information technologies.

(2) It is the intent of the legislature to encourage all hospitals, integrated delivery systems, and providers in the state of Washington to adopt health information technologies by the year 2012." [2006 c 103 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.036 Health information—Definitions. The definitions in this section apply throughout RCW 41.05.039 through 41.05.046 unless the context clearly requires otherwise.

(1) "Director" means the director of the state health care authority under this chapter.

(2) "Exchange" means the methods or medium by which health care information may be electronically and securely exchanged among authorized providers, payors, and patients within Washington state.

(3) "Health care provider" or "provider" has the same meaning as in RCW 48.43.005.

[2011 RCW Supp—page 754]

(4) "Health data provider" means an organization that is a primary source for health-related data for Washington residents, including but not limited to:

(a) The children's health immunizations linkages and development profile immunization registry provided by the department of health pursuant to chapter 43.70 RCW;

(b) Commercial laboratories providing medical laboratory testing results;

(c) Prescription drugs clearinghouses, such as the national patient health information network; and

(d) Diagnostic imaging centers.

(5) "Lead organization" means a private sector organization or organizations designated by the director to lead development of processes, guidelines, and standards under chapter 300, Laws of 2009.

(6) "Payor" means public purchasers, as defined in this section, carriers licensed under chapters 48.20, 48.21, 48.44, 48.46, and 48.62 RCW, and the Washington state health insurance pool established in chapter 48.41 RCW.

(7) "Public purchaser" means the department of social and health services, the department of labor and industries, and the health care authority.

(8) "Secretary" means the secretary of the department of health. [2011 1st sp.s. c 15 § 57; 2009 c 300 § 2.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Finding—2009 c 300: "The legislature finds that:

(1) The inability to securely share critical health information between practitioners inhibits the delivery of safe, efficient care, as evidenced by:

(a) Adverse drug events that result in an average of seven hundred seventy thousand injuries and deaths each year; and

(b) Duplicative services that add to costs and jeopardize patient well-being;

(2) Consumers are unable to act as fully informed participants in their care unless they have ready access to their own health information;

(3) The blue ribbon commission on health care costs and access found that the development of a system to provide electronic access to patient information anywhere in the state was a key to improving health care; and

(4) In 2005, the legislature established a health information infrastructure advisory board to develop a strategy for the adoption and use of health information technologies that are consistent with emerging national standards and promote interoperability of health information systems." [2009 c 300 § 1.]

41.05.037 Nurse hotline, when funded. To the extent that funding is provided specifically for this purpose, the director shall provide all persons enrolled in health plans under this chapter and chapters 70.47 and 74.09 RCW with access to a twenty-four hour, seven day a week nurse hotline. [2011 1st sp.s. c 15 § 58; 2007 c 259 § 15.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Severability—Subheadings not law—2007 c 259: See notes following RCW 41.05.033.

41.05.065 Public employees' benefits board—Duties—Eligibility—Definitions—Penalties. (1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents

on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits; and

(f) Minimum standards for insuring entities.

(3) To maintain the comprehensive nature of employee health care benefits, benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan in effect on January 1, 1993. Nothing in this subsection shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits or the administration of a high deductible health plan in conjunction with a health savings account. The board may establish employee eligibility criteria which are not substantially equivalent to employee eligibility criteria in effect on January 1, 1993.

(4) Except if bargained for under chapter 41.80 RCW, the board shall design benefits and determine the terms and conditions of employee and retired employee participation and coverage, including establishment of eligibility criteria subject to the requirements of this chapter. Employer groups obtaining benefits through contractual agreement with the authority for employees defined in RCW 41.05.011(6) (a) through (d) may contractually agree with the authority to benefits eligibility criteria which differs from that determined by the board. The eligibility criteria established by the board shall be no more restrictive than the following:

(a) Except as provided in (b) through (e) of this subsection, an employee is eligible for benefits from the date of employment if the employing agency anticipates he or she will work an average of at least eighty hours per month and for at least eight hours in each month for more than six consecutive months. An employee determined ineligible for benefits at the beginning of his or her employment shall become eligible in the following circumstances:

(i) An employee who works an average of at least eighty hours per month and for at least eight hours in each month and whose anticipated duration of employment is revised from less than or equal to six consecutive months to more

than six consecutive months becomes eligible when the revision is made.

(ii) An employee who works an average of at least eighty hours per month over a period of six consecutive months and for at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period.

(b) A seasonal employee is eligible for benefits from the date of employment if the employing agency anticipates that he or she will work an average of at least eighty hours per month and for at least eight hours in each month of the season. A seasonal employee determined ineligible at the beginning of his or her employment who works an average of at least half-time, as defined by the board, per month over a period of six consecutive months and at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period. A benefits-eligible seasonal employee who works a season of less than nine months shall not be eligible for the employer contribution during the off season, but may continue enrollment in benefits during the off season by self-paying for the benefits. A benefits-eligible seasonal employee who works a season of nine months or more is eligible for the employer contribution through the off season following each season worked.

(c) Faculty are eligible as follows:

(i) Faculty who the employing agency anticipates will work half-time or more for the entire instructional year or equivalent nine-month period are eligible for benefits from the date of employment. Eligibility shall continue until the beginning of the first full month of the next instructional year, unless the employment relationship is terminated, in which case eligibility shall cease the first month following the notice of termination or the effective date of the termination, whichever is later.

(ii) Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period are eligible for benefits at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Such an employee shall continue to receive uninterrupted employer contributions for benefits if the employee works at least half-time in a quarter or semester. Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period, but who actually work half-time or more throughout the entire instructional year, are eligible for summer or off-quarter coverage. Faculty who have met the criteria of this subsection (4)(c)(ii), who work at least two quarters of the academic year with an average academic year workload of half-time or more for three quarters of the academic year, and who have worked an average of half-time or more in each of the two preceding academic years shall continue to receive uninterrupted employer contributions for benefits if he or she works at least half-time in a quarter or semester or works two quarters of the academic year with an average academic workload each academic year of half-time or more for three quarters. Eligibility under this section ceases immediately if this criteria is not met.

(iii) Faculty may establish or maintain eligibility for benefits by working for more than one institution of higher edu-

cation. When faculty work for more than one institution of higher education, those institutions shall prorate the employer contribution costs, or if eligibility is reached through one institution, that institution will pay the full employer contribution. Faculty working for more than one institution must alert his or her employers to his or her potential eligibility in order to establish eligibility.

(iv) The employing agency must provide written notice to faculty who are potentially eligible for benefits under this subsection (4)(c) of their potential eligibility.

(v) To be eligible for maintenance of benefits through averaging under (c)(ii) of this subsection, faculty must provide written notification to his or her employing agency or agencies of his or her potential eligibility.

(d) A legislator is eligible for benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible for benefits on the date his or her term begins or they take the oath of office, whichever occurs first.

(e) A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for benefits on the date he or she takes the oath of office.

(f) Except as provided in (c)(i) and (ii) of this subsection, eligibility ceases for any employee the first of the month following termination of the employment relationship.

(g) In determining eligibility under this section, the employing agency may disregard training hours, standby hours, or temporary changes in work hours as determined by the authority under this section.

(h) Insurance coverage for all eligible employees begins on the first day of the month following the date when eligibility for benefits is established. If the date eligibility is established is the first working day of a month, insurance coverage begins on that date.

(i) Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in (a) through (e) of this subsection shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

(j) Except for an employee eligible for benefits under (b) or (c)(ii) of this subsection, an employee who has established eligibility for benefits under this section shall remain eligible for benefits each month in which he or she is in pay status for eight or more hours, if (i) he or she remains in a benefits-eligible position and (ii) leave from the benefits-eligible position is approved by the employing agency. A benefits-eligible seasonal employee is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month. Eligibility ends if these conditions are not met, the employment relationship is terminated, or the employee voluntarily transfers to a noneligible position.

(k) For the purposes of this subsection:

(i) "Academic year" means summer, fall, winter, and spring quarters or semesters;

(ii) "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees shall have the same meaning as "part-time" under RCW 28B.50.489;

(iii) "Benefits-eligible position" shall be defined by the board.

(5) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems.

(6)(a) For any open enrollment period following August 24, 2011, the board shall offer a health savings account option for employees that conforms to section 223, Part VII of subchapter B of chapter 1 of the internal revenue code of 1986. The board shall comply with all applicable federal standards related to the establishment of health savings accounts.

(b) By November 30, 2015, and each year thereafter, the authority shall submit a report to the relevant legislative policy and fiscal committees that includes the following:

(i) Public employees' benefits board health plan cost and service utilization trends for the previous three years, in total and for each health plan offered to employees;

(ii) For each health plan offered to employees, the number and percentage of employees and dependents enrolled in the plan, and the age and gender demographics of enrollees in each plan;

(iii) Any impact of enrollment in alternatives to the most comprehensive plan, including the high deductible health plan with a health savings account, upon the cost of health benefits for those employees who have chosen to remain enrolled in the most comprehensive plan.

(7) Notwithstanding any other provision of this chapter, for any open enrollment period following August 24, 2011, the board shall offer a high deductible health plan in conjunction with a health savings account developed under subsection (6) of this section.

(8) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(9) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall adopt rules setting forth criteria by which it shall evaluate the plans.

(10) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments, political subdivisions, and tribal governments not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

(11) The board may establish penalties to be imposed by the authority when the eligibility determinations of an employing agency fail to comply with the criteria under this chapter. [2011 1st sp.s. c 8 § 1; 2009 c 537 § 7. Prior: 2007 c 156 § 10; 2007 c 114 § 5; 2006 c 299 § 2; prior: 2005 c 518 § 920; 2005 c 195 § 1; 2003 c 158 § 2; 2002 c 142 § 3; 1996

c 140 § 1; 1995 1st sp.s. c 6 § 5; 1994 c 153 § 5; prior: 1993 c 492 § 218; 1993 c 386 § 9; 1988 c 107 § 8.]

Effective date—2009 c 537: See note following RCW 41.05.008.

Intent—Effective date—2007 c 114: See notes following RCW 41.05.011.

Severability—Effective date—2005 c 518: See notes following RCW 28A.500.030.

Effective date—2005 c 195: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 195 § 4.]

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.140 Payment of claims—Self-insurance—Insurance reserve funds created. (1) Except for property and casualty insurance, the authority may self-fund, self-insure, or enter into other methods of providing insurance coverage for insurance programs under its jurisdiction, including the basic health plan as provided in chapter 70.47 RCW. The authority shall contract for payment of claims or other administrative services for programs under its jurisdiction. If a program does not require the prepayment of reserves, the authority shall establish such reserves within a reasonable period of time for the payment of claims as are normally required for that type of insurance under an insured program. The authority shall endeavor to reimburse basic health plan health care providers under this section at rates similar to the average reimbursement rates offered by the statewide benchmark plan determined through the request for proposal process.

(2) Reserves established by the authority for employee and retiree benefit programs shall be held in a separate trust fund by the state treasurer and shall be known as the public employees' and retirees' insurance reserve fund. The state investment board shall act as the investor for the funds and, except as provided in RCW 43.33A.160 and 43.84.160, one hundred percent of all earnings from these investments shall accrue directly to the public employees' and retirees' insurance reserve fund.

(3) Any savings realized as a result of a program created for employees and retirees under this section shall not be used to increase benefits unless such use is authorized by statute.

(4) Reserves established by the authority to provide insurance coverage for the basic health plan under chapter 70.47 RCW shall be held in a separate trust account in the custody of the state treasurer and shall be known as the basic health plan self-insurance reserve account. The state investment board shall act as the investor for the funds as set forth in RCW 43.33A.230 and, except as provided in RCW 43.33A.160 and 43.84.160, one hundred percent of all earnings from these investments shall accrue directly to the basic health plan self-insurance reserve account.

(5) Any program created under this section shall be subject to the examination requirements of chapter 48.03 RCW as if the program were a domestic insurer. In conducting an examination, the commissioner shall determine the adequacy of the reserves established for the program.

(6) The authority shall keep full and adequate accounts and records of the assets, obligations, transactions, and affairs of any program created under this section.

(7) The authority shall file a quarterly statement of the financial condition, transactions, and affairs of any program created under this section in a form and manner prescribed by the insurance commissioner. The statement shall contain information as required by the commissioner for the type of insurance being offered under the program. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

(8) The provisions of this section do not apply to the administration of chapter 74.09 RCW. [2011 1st sp.s. c 15 § 59; 2000 c 80 § 5; 2000 c 79 § 44; 1994 c 153 § 10. Prior: 1993 c 492 § 220; 1993 c 386 § 12; 1988 c 107 § 12.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Intent—1993 c 386: See note following RCW 28A.400.391.

Additional notes found at www.leg.wa.gov

41.05.175 Prescribed, self-administered anticancer medication. (1) Each health plan offered to public employees and their covered dependents under this chapter, including those subject to the provision of Title 48 RCW, and is issued or renewed beginning January 1, 2012, and provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in *RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy. [2011 c 159 § 2.]

***Reviser's note:** RCW 48.43.005 was amended by 2011 c 314 § 3 and by 2011 c 315 § 2, changing subsections (15) and (16) to subsections (20) and (21).

Findings—2011 c 159: "The Washington state legislature finds that for cancer patients, there is an inequity in how much they have to pay toward the cost of a self-administered oral medication and how much they have to pay for an intravenous product that is administered in a physician's office or clinic. The legislature further finds that when these inequities exist, patients' access to medically necessary, appropriate treatment is often unfairly restricted. The legislature also acknowledges that self-administered chemotherapy is the only treatment for some types of cancer where there is no intravenous alternative. The legislature declares that in order to reduce the out-of-pocket costs for cancer patients whose diagnosis requires treatment through self-administered anticancer medication, the cost-sharing responsibilities for these patients must be on a basis at least comparable to those of patients receiving intravenously administered anticancer medication." [2011 c 159 § 1.]

41.05.670 Chronic care management incentives—Provider reimbursement methods. (1) Effective January 1, 2013, the authority must contract with all of the public employees benefits board managed care plans and the self-insured plan or plans to include provider reimbursement methods that incentivize chronic care management within

health homes resulting in reduced emergency department and inpatient use.

(2) Health home services contracted for under this section may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(3) For the purposes of this section, "chronic care management," and "health home" have the same meaning as in RCW 74.09.010.

(4) Contracts with fully insured plans and with any third-party administrator for the self-funded plan that include the items in subsection (1) of this section must be funded within the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act.

(5) Nothing in this section shall require contracted third-party health plans administering the self-insured contract to expend resources to implement items in subsection (1) of this section beyond the resources provided by employer funding rates provided for employee health benefits in the omnibus appropriations act or from other sources in the absence of these provisions. [2011 c 316 § 6.]

41.05.680 Report—Chronic care management. The authority shall coordinate a discussion with carriers to learn from successful chronic care management models and develop principles for effective reimbursement methods to align incentives in support of patient centered chronic care health homes. The authority shall submit a report to the appropriate committees of the legislature by December 1, 2012, describing the principles developed from the discussion and any steps taken by the public employees benefits board or carriers in Washington state to implement the principles through their payment methodologies. [2011 c 316 § 7.]

Chapter 41.05A RCW

OVERPAYMENTS OF ASSISTANCE AND COORDINATION OF BENEFITS

Sections

- 41.05A.005 Purpose—Collaboration with other agencies—Construction.
- 41.05A.010 Definitions.
- 41.05A.030 Fees for services—Reimbursement collection.
- 41.05A.040 Time limit for collection of overpayments or other debts—Write-offs of debts.
- 41.05A.050 Form of lien.
- 41.05A.060 Authorization to discharge or compromise lien.
- 41.05A.070 Filing of lien.
- 41.05A.080 Attorney representing recipient—Duties.
- 41.05A.090 Recovery for assistance by authority—Federal law—Foreclosure—Recipient's death.
- 41.05A.100 Lien against real and personal property—Lien priority—Recovery by deduction or withholding of payments—Civil action.
- 41.05A.110 Notice of overpayment of assistance.
- 41.05A.120 Order to withhold and deliver.
- 41.05A.130 Liability for failure to answer or comply with order to withhold and deliver or other violation.
- 41.05A.140 Employer required to honor assignment of earnings.
- 41.05A.150 Improper real property transfers.
- 41.05A.160 Lien against real property.
- 41.05A.170 Overpayment to vendor.
- 41.05A.180 Lien against real property of vendor or other form of security.
- 41.05A.190 Time periods for liens against vendors.
- 41.05A.200 Time limit for action to enforce vendor overpayment debt.
- 41.05A.210 Remedies against vendors nonexclusive.
- 41.05A.220 Interest on overpayments to vendors.
- 41.05A.230 Recovery of temporary total disability compensation.

- 41.05A.240 Recovery of temporary total disability compensation—Service of lien and notice to withhold and deliver.
- 41.05A.250 Duties of director of labor and industries.
- 41.05A.260 Temporary total disability compensation recipients—Adjudicative proceeding.
- 41.05A.270 Application—Benefits under Title 51 RCW.
- 41.05A.280 Recording of notice of transfer or encumbrance of real property.

41.05A.005 Purpose—Collaboration with other agencies—Construction. The purpose of this chapter is to provide the health care authority with the powers, duties, and authority with respect to the collection of overpayments and the coordination of benefits that are currently provided to the department of social and health services in chapter 43.20B RCW. Providing the health care authority with these powers is necessary for the authority to administer medical services programs established under chapter 74.09 RCW currently administered by the department of social and health services programs but transferred to the authority under chapter 15, Laws of 2011 1st sp. sess. The authority is authorized to collaborate with other state agencies in carrying out its duties under this chapter and, to the extent appropriate, may enter into agreements with such other agencies. Nothing in this chapter may be construed as diminishing the powers, duties, and authority granted to the department of social and health services in chapter 43.20B RCW with respect to the programs that will remain under its jurisdiction following enactment of chapter 15, Laws of 2011 1st sp. sess. [2011 1st sp.s. c 15 § 88.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) "Assistance" means all programs administered by the authority.
- (2) "Authority" means the Washington state health care authority.
- (3) "Director" means the director of the Washington state health care authority.
- (4) "Overpayment" means any payment or benefit to a recipient or to a vendor in excess of that to which is entitled by law, rule, or contract, including amounts in dispute.
- (5) "Vendor" means a person or entity that provides goods or services to or for clientele of the authority and that controls operational decisions. [2011 1st sp.s. c 15 § 89.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.030 Fees for services—Reimbursement collection. The authority is authorized to charge fees for services provided unless otherwise prohibited by law. The fees may be sufficient to cover the full cost of the service provided if practical or may be charged on an ability-to-pay basis if practical. This section does not supersede other statutory authority enabling the assessment of fees by the authority. Whenever the authority is authorized by law to collect total or partial reimbursement for the cost of its providing care of or exercising custody over any person, the authority shall collect

the reimbursement to the extent practical. [2011 1st sp.s. c 15 § 90.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.040 Time limit for collection of overpayments or other debts—Write-offs of debts. (1) Except as otherwise provided by law, including subsection (2) of this section, there may be no collection of overpayments and other debts due the authority after the expiration of six years from the date of notice of such overpayment or other debt unless the authority has commenced recovery action in a court of law or unless an administrative remedy authorized by statute is in place. However, any amount due in a case thus extended ceases to be a debt due the authority at the expiration of ten years from the date of the notice of the overpayment or other debt unless a court-ordered remedy would be in effect for a longer period.

(2) There may be no collection of debts due the authority after the expiration of twenty years from the date a lien is recorded pursuant to RCW 41.05A.090.

(3) The authority, at any time, may accept offers of compromise of disputed claims or may grant partial or total write-off of any debt due the authority if it is no longer cost-effective to pursue. The authority shall adopt rules establishing the considerations to be made in the granting or denial of a partial or total write-off of debts. [2011 1st sp.s. c 15 § 91.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.050 Form of lien. The form of the lien in RCW 41.05A.070 must be substantially as follows:

STATEMENT OF LIEN

Notice is hereby given that the State of Washington, Health Care Authority, has rendered assistance to, a person who was injured on or about the day of in the county of state of, and the said authority hereby asserts a lien, to the extent provided in RCW 41.05A.070, for the amount of such assistance, upon any sum due and owing (name of injured person) from, alleged to have caused the injury, and/or his or her insurer and from any other person or insurer liable for the injury or obligated to compensate the injured person on account of such injuries by contract or otherwise.

STATE OF WASHINGTON, HEALTH CARE AUTHORITY

By: (Title)

STATE OF WASHINGTON

COUNTY OF

} ss.

I,, being first duly sworn, on oath state: That I am (title); that I have read the foregoing Statement of Lien, know the contents thereof, and believe the same to be true.

Signed and sworn to or affirmed before me this day of ,

by (name of person making statement).

(Seal or stamp)

Notary Public in and for the State of Washington My appointment expires:

[2011 1st sp.s. c 15 § 92.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.060 Authorization to discharge or compromise lien. (1) No settlement made by and between a recipient and either the tort feisor or insurer, or both, discharges or otherwise compromises the lien created in RCW 41.05A.070 without the express written consent of the director or the director’s designee. Discretion to compromise such liens rests solely with the director or the director’s designee.

(2) No settlement or judgment may be entered purporting to compromise the lien created by RCW 41.05A.070 without the express written consent of the director or the director’s designee. [2011 1st sp.s. c 15 § 93.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.070 Filing of lien. (1) To secure reimbursement of any assistance paid as a result of injuries to or illness of a recipient caused by the negligence or wrong of another, the authority is subrogated to the recipient’s rights against a tort feisor or the tort feisor’s insurer, or both.

(2) The authority has the right to file a lien upon any recovery by or on behalf of the recipient from such tort feisor or the tort feisor’s insurer, or both, to the extent of the value of the assistance paid by the authority: PROVIDED, That such lien is not effective against recoveries subject to wrongful death when there are surviving dependents of the deceased. The lien becomes effective upon filing with the county auditor in the county where the assistance was authorized or where any action is brought against the tort feisor or insurer. The lien may also be filed in any other county or served upon the recipient in the same manner as a civil summons if, in the authority’s discretion, such alternate filing or service is necessary to secure the authority’s interest. The additional lien is effective upon filing or service.

(3) The lien of the authority may be against any claim, right of action, settlement proceeds, money, or benefits arising from an insurance program to which the recipient might be entitled (a) against the tort feisor or insurer of the tort feisor, or both, and (b) under any contract of insurance purchased by the recipient or by any other person providing coverage for the illness or injuries for which the assistance is paid or provided by the authority.

(4) If recovery is made by the authority under this section and the subrogation is fully or partially satisfied through an action brought by or on behalf of the recipient, the amount

paid to the authority must bear its proportionate share of attorneys’ fees and costs.

(a) The determination of the proportionate share to be borne by the authority must be based upon:

(i) The fees and costs approved by the court in which the action was initiated; or

(ii) The written agreement between the attorney and client which establishes fees and costs when fees and costs are not addressed by the court.

(b) When fees and costs have been approved by a court, after notice to the authority, the authority has the right to be heard on the matter of attorneys’ fees and costs or its proportionate share.

(c) When fees and costs have not been addressed by the court, the authority shall receive at the time of settlement a copy of the written agreement between the attorney and client which establishes fees and costs and may request and examine documentation of fees and costs associated with the case. The authority may bring an action in superior court to void a settlement if it believes the attorneys’ calculation of its proportionate share of fees and costs is inconsistent with the written agreement between the attorney and client which establishes fees and costs or if the fees and costs associated with the case are exorbitant in relation to cases of a similar nature.

(5) The rights and remedies provided to the authority in this section to secure reimbursement for assistance, including the authority’s lien and subrogation rights, may be delegated to a managed health care system by contract entered into pursuant to RCW 74.09.522. A managed health care system may enforce all rights and remedies delegated to it by the authority to secure and recover assistance provided under a managed health care system consistent with its agreement with the authority. [2011 1st sp.s. c 15 § 94.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.080 Attorney representing recipient—Duties.

(1) An attorney representing a person who, as a result of injuries or illness sustained through the negligence or wrong of another, has received, is receiving, or has applied to receive shall:

(a) Notify the authority at the time of filing any claim against a third party, commencing an action at law, negotiating a settlement, or accepting a settlement offer from the tort feisor or the tort feisor’s insurer, or both; and

(b) Give the authority thirty days’ notice before any judgment, award, or settlement may be satisfied in any action or any claim by the applicant or recipient to recover damages for such injuries or illness.

(2) The proceeds from any recovery made pursuant to any action or claim described in RCW 41.05A.070 that is necessary to fully satisfy the authority’s lien against recovery must be placed in a trust account or in the registry of the court until the authority’s lien is satisfied. [2011 1st sp.s. c 15 § 95.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.090 Recovery for assistance by authority—Federal law—Foreclosure—Recipient's death. (1) The authority shall file liens, seek adjustment, or otherwise effect recovery for assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p. The authority shall adopt a rule providing for prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) Liens may be adjusted by foreclosure in accordance with chapter 61.12 RCW.

(3) In the case of an individual who was fifty-five years of age or older when the individual received assistance, the authority shall seek adjustment or recovery from the individual's estate, and from nonprobate assets of the individual as defined by RCW 11.02.005, but only for assistance consisting of services that the authority determines to be appropriate, and related hospital and prescription drug services. Recovery from the individual's estate, including foreclosure of liens imposed under this section, must be undertaken as soon as practicable, consistent with 42 U.S.C. Sec. 1396p.

(4) The authority shall apply the assistance estate recovery law as it existed on the date that benefits were received when calculating an estate's liability to reimburse the authority for those benefits.

(5)(a) The authority shall establish procedures consistent with standards established by the federal department of health and human services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when such recovery would work an undue hardship. The authority shall recognize an undue hardship for a surviving domestic partner whenever recovery would not have been permitted if he or she had been a surviving spouse. The authority is not authorized to pursue recovery under such circumstances.

(b) Recovery of assistance from a recipient's estate may not include property made exempt from claims by federal law or treaty, including exemption for tribal artifacts that may be held by individual Native Americans.

(6) A lien authorized under this section relates back to attach to any real property that the decedent had an ownership interest in immediately before death and is effective as of that date or date of recording, whichever is earlier.

(7) The authority may enforce a lien authorized under this section against a decedent's life estate or joint tenancy interest in real property held by the decedent immediately prior to his or her death. Such a lien enforced under this subsection may not end and must continue as provided in this subsection until the authority's lien has been satisfied.

(a) The value of the life estate subject to the lien is the value of the decedent's interest in the property subject to the life estate immediately prior to the decedent's death.

(b) The value of the joint tenancy interest subject to the lien is the value of the decedent's fractional interest the recipient would have owned in the jointly held interest in the property had the recipient and the surviving joint tenants held title to the property as tenants in common on the date of the recipient's death.

(c) The authority may not enforce the lien provided by this subsection against a bona fide purchaser or encumbrancer that obtains an interest in the property after the death of the recipient and before the authority records either its lien or the request for notice of transfer or encumbrance as provided by RCW 41.05A.280.

(d) The authority may not enforce a lien provided by this subsection against any property right that vested prior to July 1, 2005.

(8)(a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a) and the conditions of this subsection (8), the authority is authorized to file a lien against the property of an individual prior to his or her death, and to seek adjustment and recovery from the individual's estate or sale of the property subject to the lien, if:

(i) The individual is an inpatient in a nursing facility, intermediate care facility for persons with intellectual disabilities, or other medical institution; and

(ii) The authority has determined after notice and opportunity for a hearing that the individual cannot reasonably be expected to be discharged from the medical institution and to return home.

(b) If the individual is discharged from the medical facility and returns home, the authority shall dissolve the lien.

(9) The authority is authorized to adopt rules to effect recovery under this section. The authority may adopt by rule later enactments of the federal laws referenced in this section.

(10) It is the responsibility of the authority to fully disclose in advance verbally and in writing, in easy to understand language, the terms and conditions of estate recovery to all persons offered care subject to recovery of payments.

(11) In disclosing estate recovery costs to potential clients, and to family members at the consent of the client, the authority shall provide a written description of the community service options. [2011 1st sp.s. c 15 § 96.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.100 Lien against real and personal property—Lien priority—Recovery by deduction or withholding of payments—Civil action. (1) Overpayments of assistance become a lien against the real and personal property of the recipient from the time of filing by the authority with the county auditor of the county in which the recipient resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(2) Debts due the state for overpayments of assistance may be recovered by the state by deduction from the subsequent assistance payments to such persons, lien and foreclosure, or order to withhold and deliver, or may be recovered by civil action. [2011 1st sp.s. c 15 § 97.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.110 Notice of overpayment of assistance. (1) Any person who owes a debt to the state for an overpayment of assistance must be notified of that debt by either personal service or certified mail, return receipt requested. Personal service, return of the requested receipt, or refusal by the debtor of such notice is proof of notice to the debtor of the debt owed. Service of the notice must be in the manner prescribed for the service of a summons in a civil action. The notice must include a statement of the debt owed; a statement that the property of the debtor will be subject to collection action after the debtor terminates from assistance; a statement

that the property will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and a statement that the net proceeds will be applied to the satisfaction of the overpayment debt. Action to collect the debt by lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver, is lawful after ninety days from the debtor's termination from assistance or the receipt of the notice of debt, whichever is later. This does not preclude the authority from recovering overpayments by deduction from subsequent assistance payments, not exceeding deductions as authorized under federal law with regard to financial assistance programs: PROVIDED, That subject to federal legal requirement, deductions may not exceed five percent of the grant payment standard if the overpayment resulted from error on the part of the authority or error on the part of the recipient without willful or knowing intent of the recipient in obtaining or retaining the overpayment.

(2) A current or former recipient who is aggrieved by a claim that he or she owes a debt for an overpayment of assistance has the right to an adjudicative proceeding pursuant to RCW 74.09.741. If no application is filed, the debt is subject to collection action as authorized under this chapter. If a timely application is filed, the execution of collection action on the debt is stayed pending the final adjudicative order or termination of the debtor from assistance, whichever occurs later. [2011 1st sp.s. c 15 § 98.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.120 Order to withhold and deliver. (1) After service of a notice of debt for an overpayment as provided for in RCW 41.05A.110, stating the debt accrued, the director may issue to any person, firm, corporation, association, political subdivision, or department of the state an order to withhold and deliver property of any kind including, but not restricted to, earnings which are due, owing, or belonging to the debtor, when the director has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state property which is due, owing, or belonging to the debtor. The order to withhold and deliver must state the amount of the debt, and must state in summary the terms of this section, RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. Sec. 1673, and other state or federal exemption laws applicable generally to debtors. The order to withhold and deliver must be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested. Any person, firm, corporation, association, political subdivision, or department of the state upon whom service has been made shall answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein. The director may require further and additional answers to be completed by the person, firm, corporation, association, political subdivision, or department of the state. If any such person, firm, corporation, association, political subdivision, or department of the state possesses any property which may be subject to the claim of the authority, such property must be withheld immediately upon receipt of the order to withhold and deliver and

[2011 RCW Supp—page 762]

must, after the twenty-day period, upon demand, be delivered forthwith to the director. The director shall hold the property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the director a good and sufficient bond, satisfactory to the director, conditioned upon final determination of liability. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, association, political subdivision, or department of the state subject to withdrawal by the debtor, such money must be delivered by remittance payable to the order of the director. Delivery to the director, subject to the exemptions under RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. Sec. 1673, and other state or federal law applicable generally to debtors, of the money or other property held or claimed satisfies the requirement of the order to withhold and deliver. Delivery to the director serves as full acquittance, and the state warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the director pursuant to this chapter. The state also warrants and represents that it shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter.

(2) The director shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by certified mail a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address or, in the alternative, a copy of the order to withhold and deliver must be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order must be mailed or served together with a concise explanation of the right to petition for a hearing on any issue related to the collection. This requirement is not jurisdictional, but, if the copy is not mailed or served as provided in this section, or if any irregularity appears with respect to the mailing or service, the superior court, on its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the director's failure to serve on or mail to the debtor the copy. [2011 1st sp.s. c 15 § 99.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.130 Liability for failure to answer or comply with order to withhold and deliver or other violation. If any person, firm, corporation, association, political subdivision, or department of the state fails to answer an order to withhold and deliver within the time prescribed in RCW 41.05A.120, or fails or refuses to deliver property pursuant to the order, or after actual notice of filing of a lien as provided for in this chapter, pays over, releases, sells, transfers, or conveys real or personal property subject to such lien to or for the benefit of the debtor or any other person, or fails or refuses to surrender upon demand property distrained under RCW 41.05A.120, or fails or refuses to honor an assignment of wages presented by the director, such person, firm, corpora-

tion, association, political subdivision, or department of the state is liable to the authority in an amount equal to one hundred percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or assignment of wages, together with costs, interest, and reasonable attorneys' fees. [2011 1st sp.s. c 15 § 100.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.140 Employer required to honor assignment of earnings. Any person, firm, corporation, association, political subdivision, or department employing a person owing a debt for overpayment of assistance received shall honor, according to its terms, a duly executed assignment of earnings presented to the employer by the director as a plan to satisfy or retire an overpayment debt. This requirement to honor the assignment of earnings is applicable whether the earnings are to be paid presently or in the future and continues in force and effect until released in writing by the director. Payment of moneys pursuant to an assignment of earnings presented to the employer by the director serves as full acquittance under any contract of employment, and the state warrants and represents it shall defend and hold harmless such action taken pursuant to the assignment of earnings. The director is released from liability for improper receipt of moneys under assignment of earnings upon return of any moneys so received. [2011 1st sp.s. c 15 § 101.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.150 Improper real property transfers. If an improper real property transfer is made as defined in RCW 74.08.331 through 74.08.338, the authority may request the attorney general to file suit to rescind the transaction except as to subsequent bona fide purchasers for value. If it is established by judicial proceedings that a fraudulent conveyance occurred, the value of any assistance which has been furnished may be recovered in any proceedings from the recipient or the recipient's estate. [2011 1st sp.s. c 15 § 102.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.160 Lien against real property. When the authority provides assistance to persons who possess excess real property under *RCW 74.04.005(11)(g), the authority may file a lien against or otherwise perfect its interest in such real property as a condition of granting such assistance, and the authority has the status of a secured creditor. [2011 1st sp.s. c 15 § 103.]

***Reviser's note:** RCW 74.04.005 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (11)(g) to (13)(g).

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.170 Overpayment to vendor. (1) When the authority determines that a vendor was overpaid by the authority for either goods or services, or both, provided to authority clients, except nursing homes under chapter 74.46

RCW, the authority shall give written notice to the vendor. The notice must include the amount of the overpayment, the basis for the claim, and the rights of the vendor under this section.

(2) The notice may be served upon the vendor in the manner prescribed for the service of a summons in civil action or be mailed to the vendor at the last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt.

(3) The vendor has the right to an adjudicative proceeding governed by the administrative procedure act, chapter 34.05 RCW, and the rules of the authority. The vendor's application for an adjudicative proceeding must be in writing, state the basis for contesting the overpayment notice, and include a copy of the authority's notice. The application must be served on and received by the authority within twenty-eight days of the vendor's receipt of the notice of overpayment. The vendor must serve the authority in a manner providing proof of receipt.

(4) Where an adjudicative proceeding has been requested, the presiding or reviewing officer [officer] shall determine the amount, if any, of the overpayment received by the vendor.

(5) If the vendor fails to attend or participate in the adjudicative proceeding, upon a showing of valid service, the presiding or reviewing officer may enter an administrative order declaring the amount claimed in the notice to be assessed against the vendor and subject to collection action by the authority.

(6) Failure to make an application for an adjudicative proceeding within twenty-eight days of the date of notice results in the establishment of a final debt against the vendor in the amount asserted by the authority and that amount is subject to collection action. The authority may also charge the vendor with any costs associated with the collection of any final overpayment or debt established against the vendor.

(7) The authority may enforce a final overpayment or debt through lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, or other collection action available to the authority to satisfy the debt due.

(8) Debts determined under this chapter are subject to collection action without further necessity of action by a presiding or reviewing officer. The authority may collect the debt in accordance with RCW 41.05A.120, 41.05A.130, and 41.05A.180. In addition, a vendor lien may be subject to distraint and seizure and sale in the same manner as prescribed for support liens in RCW 74.20A.130.

(9) Chapter 66, Laws of 1998 applies to overpayments for goods or services provided on or after July 1, 1998.

(10) The authority may adopt rules consistent with this section. [2011 1st sp.s. c 15 § 104.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.180 Lien against real property of vendor or other form of security. (1) The authority may, at the director's discretion, secure the repayment of any outstanding overpayment, plus interest, if any, through the filing of a lien against the vendor's real property, or by requiring the posting

of a bond, assignment of deposit, or some other form of security acceptable to the authority, or by doing both.

(a) Any lien is effective from the date of filing for record with the county auditor of the county in which the property is located and the lien claim has preference over the claims of all unsecured creditors.

(b) The authority shall review and determine the acceptability of all other forms of security.

(c) Any bond must be issued by a company licensed as a surety in the state of Washington.

(d) This subsection does not apply to nursing homes licensed under chapter 18.51 RCW or portions of hospitals licensed under chapter 70.41 RCW and operating as a nursing home, if those facilities are subject to chapter 74.46 RCW.

(2) The authority may recover any overpayment, plus interest, if any, by setoff or recoupment against subsequent payments to the vendor. [2011 1st sp.s. c 15 § 105.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.190 Time periods for liens against vendors.

Liens created under RCW 41.05A.180 bind the affected property for a period of ten years after the lien has been recorded or ten years after the resolution of all good faith disputes as to the overpayment, whichever is later. Any civil action by the authority to enforce such lien must be timely commenced before the ten-year period expires or the lien is released. A civil action to enforce such lien is not timely commenced unless the summons and complaint are filed within the ten-year period in a court having jurisdiction and service of the summons and complaint is made upon all parties in the manner prescribed by appropriate civil court rules. [2011 1st sp.s. c 15 § 106.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.200 Time limit for action to enforce vendor overpayment debt. Any action to enforce a vendor overpayment debt must be commenced within six years from the date of the authority's notice to the vendor. [2011 1st sp.s. c 15 § 107.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.210 Remedies against vendors nonexclusive. The remedies under RCW 41.05A.180 and 41.05A.190 are nonexclusive and nothing contained in this chapter may be construed to impair or affect the right of the authority to maintain a civil action or to pursue any other remedies available to it under the laws of this state to recover such debt. [2011 1st sp.s. c 15 § 108.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.220 Interest on overpayments to vendors. (1) Except as provided in subsection (4) of this section, vendors shall pay interest on overpayments at the rate of one percent per month or portion thereof. Where partial repayment of an

[2011 RCW Supp—page 764]

overpayment is made, interest accrues on the remaining balance. Interest must not accrue when the overpayment occurred due to authority error.

(2) If the overpayment is discovered by the vendor prior to discovery and notice by the authority, the interest begins accruing ninety days after the vendor notifies the authority of such overpayment.

(3) If the overpayment is discovered by the authority prior to discovery and notice by the vendor, the interest begins accruing thirty days after the date of notice by the authority to the vendor.

(4) This section does not apply to:

(a) Interagency or intergovernmental transactions; and

(b) Contracts for public works, goods and services procured for the exclusive use of the authority, equipment, or travel. [2011 1st sp.s. c 15 § 109.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.230 Recovery of temporary total disability compensation. (1) To avoid a duplicate payment of benefits, a recipient of assistance from the authority is deemed to have subrogated the authority to the recipient's right to recover temporary total disability compensation due to the recipient and the recipient's dependents under Title 51 RCW, to the extent of such assistance or compensation, whichever is less. However, the amount to be repaid to the authority must bear its proportionate share of attorneys' fees and costs, if any, incurred under Title 51 RCW by the recipient or the recipient's dependents.

(2) The authority may assert and enforce a lien and notice to withhold and deliver to secure reimbursement. The authority shall identify in the lien and notice to withhold and deliver the recipient of assistance and temporary total disability compensation and the amount claimed by the authority. [2011 1st sp.s. c 15 § 110.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.240 Recovery of temporary total disability compensation—Service of lien and notice to withhold and deliver. The effective date of the lien and notice to withhold and deliver provided in RCW 41.05A.230 is the day that it is received by the department of labor and industries or a self-insurer as defined in chapter 51.08 RCW. Service of the lien and notice to withhold and deliver may be made personally, by regular mail with postage prepaid, or by electronic means. A statement of lien and notice to withhold and deliver must be mailed to the recipient at the recipient's last known address by certified mail, return receipt requested, no later than two business days after the authority mails, delivers, or transmits the lien and notice to withhold and deliver to the department of labor and industries or a self-insurer. [2011 1st sp.s. c 15 § 111.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.250 Duties of director of labor and industries.

The director of labor and industries or the director's designee, or a self-insurer as defined in chapter 51.08 RCW, following receipt of the lien and notice to withhold and deliver, shall deliver to the director of the authority or the director's designee any temporary total disability compensation payable to the recipient named in the lien and notice to withhold and deliver up to the amount claimed. The director of labor and industries or self-insurer shall withhold and deliver from funds currently in the director's or self-insurer's possession or from any funds that may at any time come into the director's or self-insurer's possession on account of temporary total disability compensation payable to the recipient named in the lien and notice to withhold and deliver. [2011 1st sp.s. c 15 § 112.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.260 Temporary total disability compensation recipients—Adjudicative proceeding.

(1) A recipient feeling aggrieved by the action of the authority in recovering his or her temporary total disability compensation as provided in RCW 41.05A.230 through 41.05A.270 has the right to an adjudicative proceeding.

(2) A recipient seeking an adjudicative proceeding shall file an application with the director within twenty-eight days after the statement of lien and notice to withhold and deliver was mailed to the recipient. If the recipient files an application more than twenty-eight days after, but within one year of, the date the statement of lien and notice to withhold and deliver was mailed, the recipient is entitled to a hearing if the recipient shows good cause for the recipient's failure to file a timely application. The filing of a late application does not affect prior collection action pending the final adjudicative order. Until good cause for failure to file a timely application is decided, the authority may continue to collect under the lien and notice to withhold and deliver.

(3) The proceeding shall be governed by chapter 34.05 RCW, the administrative procedure act. [2011 1st sp.s. c 15 § 113.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.270 Application—Benefits under Title 51 RCW. RCW 41.05A.230 through 41.05A.260 and this section do not apply to persons whose eligibility for benefits under Title 51 RCW is based upon an injury or illness occurring prior to July 1, 1972. [2011 1st sp.s. c 15 § 114.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

41.05A.280 Recording of notice of transfer or encumbrance of real property. (1) When an individual receives assistance subject to recovery under this chapter and the individual is the holder of record title to real property or the purchaser under a land sale contract, the authority may present to the county auditor for recording in the deed and mortgage records of a county a request for notice of transfer or encumbrance of the real property. The authority shall adopt a rule

providing prior notice and hearing rights to the record title holder or purchaser under a land sale contract.

(2) The authority shall present to the county auditor for recording a termination of request for notice of transfer or encumbrance when, in the judgment of the authority, it is no longer necessary or appropriate for the authority to monitor transfers or encumbrances related to the real property.

(3) The authority shall adopt by rule a form for the request for notice of transfer or encumbrance and the termination of request for notice of transfer or encumbrance that, at a minimum:

(a) Contains the name of the assistance recipient and a case identifier or other appropriate information that links the individual who is the holder of record title to real property or the purchaser under a land sale contract to the individual's assistance records;

(b) Contains the legal description of the real property;

(c) Contains a mailing address for the authority to receive the notice of transfer or encumbrance; and

(d) Complies with the requirements for recording in RCW 36.18.010 for those forms intended to be recorded.

(4) The authority shall pay the recording fee required by the county clerk under RCW 36.18.010.

(5) The request for notice of transfer or encumbrance described in this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in the real property. [2011 1st sp.s. c 15 § 115.]

Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.

Chapter 41.06 RCW**STATE CIVIL SERVICE LAW**

Sections

41.06.020	Definitions.
41.06.030	Repealed.
41.06.070	Exemptions—Right of reversion to civil service status—Exception.
41.06.0711	Innovate Washington—Certain personnel exempted from chapter.
41.06.076	Department of social and health services—Certain personnel exempted from chapter.
41.06.080	Human resource services available on request to certain governmental entities—Reimbursement.
41.06.093	Washington state patrol—Certain personnel exempted from chapter.
41.06.099	Department of enterprise services—Certain personnel exempted from chapter.
41.06.101	Office of the chief information officer—Certain personnel exempted from chapter.
41.06.110	Washington personnel resources board—Created—Term—Qualifications, conditions—Compensation, travel expenses—Officers, quorum, records.
41.06.111	Repealed.
41.06.120	Meetings of board—Hearings authorized, notice—Majority to approve release of findings—Administration of oaths.
41.06.130	Repealed.
41.06.133	Rules of director—Personnel administration—Required agency report.
41.06.136	Decodified.
41.06.139	Repealed.
41.06.142	Purchasing services by contract—Effect on employees in the classified service—Criteria to be met—Bidding—Definitions.
41.06.150	Rules of director—Mandatory subjects—Personnel administration.
41.06.152	Job classification revisions, class studies, salary adjustments—Limitations.

41.06.157	Comprehensive classification plan for classified positions—Contents—Salary surveys.
41.06.162	State salary schedule.
41.06.167	Compensation surveys required for officers and officer candidates of the Washington state patrol—Limited public disclosure exemption.
41.06.169	Employee performance evaluations—Standardized procedures and forms required to be developed.
41.06.170	Reduction, suspension, dismissal, demotion of employee—Right to appeal.
41.06.220	Reinstatement after appeal, guaranteed rights and benefits.
41.06.260	Conflict with federal requirements—Effect—Rules to conform chapter.
41.06.270	Salary withheld unless employment is in accord with chapter—Certification of payrolls, procedures.
41.06.280	Personnel service fund—Created—Charges to agencies, payment—Use, disbursement.
41.06.285	Higher education personnel service fund.
41.06.350	Acceptance of federal funds authorized.
41.06.395	Training programs on sexual harassment.
41.06.400	Training and career development programs—Powers and duties of department of enterprise services.
41.06.410	Agency training and career development plans—Budget.
41.06.420	Entry-level management training course—Rules—Requirements—Suspension—Waiver—Designation of supervisory or management positions.
41.06.476	Background investigation rules—Updating.
41.06.480	Repealed.
41.06.490	State employee return-to-work program.
41.06.500	Managers—Rules—Goals.
41.06.510	Institutions of higher education—Designation of personnel officer.
41.06.530	Personnel resource and management policy—Implementation.
41.06.560	Monetary performance-based awards or incentives—Restrictions.

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

(1) "Affirmative action" means a procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, and disabled veterans are provided with increased employment opportunities. It shall not mean any sort of quota system.

(2) "Agency" means an office, department, board, commission, or other separate unit or division, however designated, of the state government and all personnel thereof; it includes any unit of state government established by law, the executive officer or members of which are either elected or appointed, upon which the statutes confer powers and impose duties in connection with operations of either a governmental or proprietary nature.

(3) "Board" means the Washington personnel resources board established under the provisions of RCW 41.06.110, except that this definition does not apply to the words "board" or "boards" when used in RCW 41.06.070.

(4) "Career development" means the progressive development of employee capabilities to facilitate productivity, job satisfaction, and upward mobility through work assignments as well as education and training that are both state-sponsored and are achieved by individual employee efforts, all of which shall be consistent with the needs and obligations of the state and its agencies.

(5) "Classified service" means all positions in the state service subject to the provisions of this chapter.

(6) "Comparable worth" means the provision of similar salaries for positions that require or impose similar responsibilities, judgments, knowledge, skills, and working conditions.

(7) "Competitive service" means all positions in the classified service for which a competitive examination is required as a condition precedent to appointment.

(8) "Department" means an agency of government that has as its governing officer a person, or combination of persons such as a commission, board, or council, by law empowered to operate the agency responsible either to (a) no other public officer or (b) the governor.

(9) "Director" means the human resources director within the office of financial management and appointed under RCW 43.41.113.

(10) "Institutions of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(11) "Noncompetitive service" means all positions in the classified service for which a competitive examination is not required.

(12) "Related boards" means the state board for community and technical colleges; and such other boards, councils, and commissions related to higher education as may be established.

(13) "Training" means activities designed to develop job-related knowledge and skills of employees. [2011 1st sp.s. c 43 § 401; 1993 c 281 § 19. Prior: 1985 c 461 § 1; 1985 c 365 § 3; 1983 1st ex.s. c 75 § 4; 1982 1st ex.s. c 53 § 1; 1980 c 118 § 2; 1970 ex.s. c 12 § 1; prior: 1969 ex.s. c 36 § 21; 1969 c 45 § 6; 1967 ex.s. c 8 § 48; 1961 c 1 § 2 (Initiative Measure No. 207, approved November 8, 1960).]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

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

41.06.070 Exemptions—Right of reversion to civil service status—Exception. (1) The provisions of this chapter do not apply to:

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(c) Officers, academic personnel, and employees of technical colleges;

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

(g) In the departments of employment security and social and health services, the director and the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the governor, the direc-

tor, his or her confidential secretary, and his or her statutory assistant directors;

(h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:

(i) All members of such boards, commissions, or committees;

(ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: The secretary of the board, commission, or committee; the chief executive officer of the board, commission, or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;

(iii) If the members of the board, commission, or committee serve on a full-time basis: The chief executive officer or administrative officer as designated by the board, commission, or committee; and a confidential secretary to the chair of the board, commission, or committee;

(iv) If all members of the board, commission, or committee serve ex officio: The chief executive officer; and the confidential secretary of such chief executive officer;

(i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;

(j) Assistant attorneys general;

(k) Commissioned and enlisted personnel in the military service of the state;

(l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board;

(m) Officers and employees of the Washington state fruit commission;

(n) Officers and employees of the Washington apple commission;

(o) Officers and employees of the Washington state dairy products commission;

(p) Officers and employees of the Washington tree fruit research commission;

(q) Officers and employees of the Washington state beef commission;

(r) Officers and employees of the Washington grain commission;

(s) Officers and employees of any commission formed under chapter 15.66 RCW;

(t) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;

(u) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

(v) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;

(w) Staff employed by the department of commerce to administer energy policy functions;

(x) The manager of the energy facility site evaluation council;

(y) A maximum of ten staff employed by the department of commerce to administer innovation and policy functions, including the three principal policy assistants exempted under (v) of this subsection;

(z) Staff employed by Washington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5);

(aa) Officers and employees of the consolidated technology services agency created in RCW 43.105.006 that perform the following functions or duties: Systems integration; data center engineering and management; network systems engineering and management; information technology contracting; information technology customer relations management; and network and systems security.

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(c) Printing craft employees in the department of printing at the University of Washington.

(3) In addition to the exemptions specifically provided by this chapter, the director may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the office of financial management stating the reasons for requesting such exemptions. The director shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which exemption is requested is one involv-

ing substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, or is a senior expert in enterprise information technology infrastructure, engineering, or systems, the director shall grant the request. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1)(j) through (t) and (2) of this section, shall be determined by the director. Changes to the classification plan affecting exempt salaries must meet the same provisions for classified salary increases resulting from adjustments to the classification plan as outlined in RCW 41.06.152.

From July 1, 2011, through June 29, 2013, salaries for all positions exempt from classification under this chapter are subject to RCW 41.04.820.

From February 18, 2009, through June 30, 2013, a salary or wage increase shall not be granted to any position exempt from classification under this chapter, except that a salary or wage increase may be granted to employees pursuant to collective bargaining agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW, and except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(a) The salary increase can be paid within existing resources;

(b) The salary increase will not adversely impact the provision of client services; and

(c) For any state agency of the executive branch, not including institutions of higher education, the salary increase is approved by the director of the office of financial management.

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position exempt from classification under this chapter shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Any agency granting a salary increase from July 1, 2011, through June 30, 2013, to a position exempt from classification under this chapter shall submit a report to the fiscal committees of the legislature by July 31, 2012, and July 31, 2013, detailing the positions for which salary increases were granted during the preceding fiscal year, the size of the increases, and the reasons for giving the increases.

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is

subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

From February 15, 2010, until June 30, 2013, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance management confirmation granted by the department of personnel under WAC 357-37-055. [2011 1st sp.s. c 43 § 1010; 2011 1st sp.s. c 39 § 4; 2011 1st sp.s. c 16 § 22. Prior: 2010 c 271 § 801; 2010 c 2 § 2; 2010 c 1 § 1; prior: 2009 c 33 § 36; 2009 c 5 § 1; 2002 c 354 § 209; 1998 c 245 § 40; prior: 1996 c 319 § 3; 1996 c 288 § 33; 1996 c 186 § 109; 1995 c 163 § 1; 1994 c 264 § 13; prior: 1993 sp.s. c 2 § 15; 1993 c 379 § 306; 1993 c 281 § 21; 1990 c 60 § 101; 1989 c 96 § 8; 1987 c 389 § 2; 1985 c 221 § 1; 1984 c 210 § 2; 1983 c 15 § 21; 1982 1st ex.s. c 53 § 2; 1981 c 225 § 2; 1980 c 87 § 14; 1973 1st ex.s. c 133 § 1; 1972 ex.s. c 11 § 1; prior: 1971 ex.s. c 209 § 1; 1971 ex.s. c 59 § 1; 1971 c 81 § 100; 1969 ex.s. c 36 § 23; 1967 ex.s. c 8 § 47; 1961 c 179 § 1; 1961 c 1 § 7 (Initiative Measure No. 207, approved November 8, 1960).]

Reviser's note: This section was amended by 2011 1st sp.s. c 16 § 22, 2011 1st sp.s. c 39 § 4, and by 2011 1st sp.s. c 43 § 1010, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.065.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.065.

Purpose—Effective date—2010 c 271: See notes following RCW 43.330.005.

Findings—2010 c 2: "The legislature finds that the current economic crisis is requiring sacrifices by citizens and businesses all across the state. The legislature acknowledges the sacrifices also being made by the many state employees who have volunteered for unpaid furlough days including those, such as our ferry workers, who volunteered for pay freezes. The recession requires us to continue to find every possible cost savings while striving to continue to deliver key services to our citizens. Therefore, the legislature finds it necessary to immediately suspend recognition awards given to state employees. Until the economic climate permits the resumption of appropriate cash awards, the legislature encourages supervisors throughout state agencies to look for nonmonetary ways to acknowledge outstanding

contributions to Washington's citizens by our state's civil servants." [2010 c 2 § 1.]

Effective date—2010 c 2: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 15, 2010]." [2010 c 2 § 7.]

Effective date—2010 c 1: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 15, 2010]." [2010 c 1 § 9.]

Effective date—2009 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 18, 2009]." [2009 c 5 § 13.]

Short title—Headings, captions not law—Severability—2002 c 354: See RCW 41.80.907 through 41.80.909.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

County road administration board: RCW 36.78.060.

State agencies and departments—Certain personnel exempted from chapter basic health plan: RCW 70.47.040.

board of health: RCW 43.20.030.

caseload forecast supervisor and staff: RCW 41.06.087.

center for volunteerism and citizen service: RCW 43.150.040.

Columbia River Gorge commission: RCW 43.97.015.

commission on judicial conduct: RCW 2.64.050.

department of

agriculture: RCW 41.06.084.

corrections: RCW 41.06.071.

ecology: RCW 41.06.073, 43.21A.100.

health: RCW 43.70.020.

information services: RCW 41.06.094.

retirement systems: RCW 41.50.070.

services for the blind: RCW 74.18.050.

social and health services: RCW 43.20A.090.

transportation: RCW 41.06.079, 47.01.081.

veterans affairs: RCW 41.06.077.

economic and revenue forecast supervisor and staff: RCW 41.06.087.

gambling commission: RCW 9.46.080.

law revision commission: RCW 41.06.083.

office of

administrative hearings: RCW 34.12.030.

financial management: RCW 41.06.075, 43.41.080.

minority and women's business enterprises: RCW 39.19.030.

state actuary: RCW 44.44.030.

state internship program: RCW 41.06.088.

state investment board: RCW 43.33A.100.

state lottery commission: RCW 67.70.050.

state school directors' association: RCW 41.06.086.

state treasurer: RCW 43.08.120.

state veterinarian: RCW 41.06.084.

superintendent of public instruction: RCW 28A.300.020.

Washington conservation corps: RCW 43.220.070.

Washington service corps: RCW 50.65.110.

Washington state patrol, drug control assistance unit: RCW 43.43.640.

world fair commission: RCW 41.06.085.

Additional notes found at www.leg.wa.gov

41.06.0711 Innovate Washington—Certain personnel exempted from chapter. In addition to the exemptions in RCW 41.06.070, this chapter does not apply to any position in or employee of innovate Washington under chapter 43.333 RCW. [2011 1st sp.s. c 14 § 5.]

Effective date—2011 1st sp.s. c 14: See RCW 43.333.901.

41.06.076 Department of social and health services—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of

this chapter shall not apply in the department of social and health services to the secretary; the secretary's executive assistant, if any; not to exceed six assistant secretaries, thirteen division directors, six regional directors; one confidential secretary for each of the above-named officers; not to exceed six bureau chiefs; and all superintendents of institutions of which the average daily population equals or exceeds one hundred residents. [2011 1st sp.s. c 43 § 402; 1997 c 386 § 1; 1993 c 281 § 22; 1980 c 73 § 1; 1970 ex.s. c 18 § 8.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.080 Human resource services available on request to certain governmental entities—Reimbursement. Notwithstanding the provisions of this chapter, the office of financial management and the department of enterprise services may make their human resource services available on request, on a reimbursable basis, to:

(1) Either the legislative or the judicial branch of the state government;

(2) Any county, city, town, or other municipal subdivision of the state;

(3) The institutions of higher learning;

(4) Any agency, class, or position set forth in RCW 41.06.070. [2011 1st sp.s. c 43 § 403; 1970 ex.s. c 12 § 2. Prior: 1969 ex.s. c 152 § 2; 1969 c 45 § 5; 1961 c 1 § 8 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.093 Washington state patrol—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the Washington state patrol to confidential secretaries of agency bureau chiefs, or their functional equivalent, and a confidential secretary for the chief of staff. [2011 1st sp.s. c 43 § 404; 1993 c 281 § 24; 1990 c 14 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.099 Department of enterprise services—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, this chapter does not apply in the department of enterprise services to the director, the director's confidential secretary, deputy and assistant directors, and any other exempt staff members provided for in RCW 43.19.008. [2011 1st sp.s. c 43 § 106.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.101 Office of the chief information officer—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter do not apply in the office of the chief information officer to the chief information officer, the chief information officer's confidential secretary, assistant directors, and any other exempt staff members provided for in RCW 43.41A.015. [2011 1st sp.s. c 43 § 723.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.110 Washington personnel resources board—Created—Term—Qualifications, conditions—Compensation, travel expenses—Officers, quorum, records. (1) There is hereby created a Washington personnel resources board composed of three members appointed by the governor, subject to confirmation by the senate. The members of the personnel board serving June 30, 1993, shall be the members of the Washington personnel resources board, and they shall complete their terms as under the personnel board. Each odd-numbered year thereafter the governor shall appoint a member for a six-year term. Each member shall continue to hold office after the expiration of the member's term until a successor has been appointed. Persons so appointed shall have clearly demonstrated an interest and belief in the merit principle, shall not hold any other employment with the state, shall not have been an officer of a political party for a period of one year immediately prior to such appointment, and shall not be or become a candidate for partisan elective public office during the term to which they are appointed;

(2) Each member of the board shall be compensated in accordance with RCW 43.03.250. The members of the board may receive any number of daily payments for official meetings of the board actually attended. Members of the board shall also be reimbursed for travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

(3) At its first meeting following the appointment of all of its members, and annually thereafter, the board shall elect a chair and vice chair from among its members to serve one year. The presence of at least two members of the board shall constitute a quorum to transact business. A written public record shall be kept by the board of all actions of the board. The director shall serve as secretary.

(4) The board may appoint and compensate hearing officers to hear and conduct appeals. Such compensation shall be paid on a contractual basis for each hearing, in accordance with the provisions of chapter 43.88 RCW and rules adopted pursuant thereto, as they relate to personal service contracts. [2011 1st sp.s. c 43 § 405; 2002 c 354 § 210; 1993 c 281 § 25; 1984 c 287 § 69; 1982 c 10 § 8. Prior: 1981 c 338 § 20; 1981 c 311 § 16; 1977 c 6 § 2; prior: 1975-'76 2nd ex.s. c 43 § 1; 1975-'76 2nd ex.s. c 34 § 86; 1961 c 1 § 11 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Short title—Headings, captions not law—Severability—2002 c 354: See RCW 41.80.907 through 41.80.909.

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

Adoption of rules for leave sharing program: RCW 41.04.670.

Appointment and compensation of institutional chaplains: RCW 72.01.210.

Additional notes found at www.leg.wa.gov

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

[2011 RCW Supp—page 770]

41.06.120 Meetings of board—Hearings authorized, notice—Majority to approve release of findings—Administration of oaths. (1) In the necessary conduct of its work, the board shall meet monthly unless there is no pending business requiring board action and may hold hearings, such hearings to be called by (a) the chairman of the board, or (b) a majority of the members of the board. An official notice of the calling of the hearing shall be filed with the secretary, and all members shall be notified of the hearing within a reasonable period of time prior to its convening.

(2) No release of material or statement of findings shall be made except with the approval of a majority of the board;

(3) In the conduct of hearings or investigations, a member of the board or the director, or the hearing officer, may administer oaths. [2011 1st sp.s. c 43 § 406; 1981 c 311 § 17; 1975-'76 2nd ex.s. c 43 § 2; 1961 c 1 § 12 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

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

41.06.133 Rules of director—Personnel administration—Required agency report. (1) The director shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

(a) The reduction, dismissal, suspension, or demotion of an employee;

(b) Training and career development;

(c) Probationary periods of six to twelve months and rejections of probationary employees, depending on the job requirements of the class, except as follows:

(i) Entry level state park rangers shall serve a probationary period of twelve months; and

(ii) The probationary period of campus police officer appointees who are required to attend the Washington state criminal justice training commission basic law enforcement academy shall extend from the date of appointment until twelve months from the date of successful completion of the basic law enforcement academy, or twelve months from the date of appointment if academy training is not required. The director shall adopt rules to ensure that employees promoting to campus police officer who are required to attend the Washington state criminal justice training commission basic law enforcement academy shall have the trial service period extend from the date of appointment until twelve months from the date of successful completion of the basic law enforcement academy, or twelve months from the date of appointment if academy training is not required;

(d) Transfers;

(e) Promotional preferences;

(f) Sick leaves and vacations;

(g) Hours of work;

(h) Layoffs when necessary and subsequent reemployment, except for the financial basis for layoffs;

(i) The number of names to be certified for vacancies;

(j) Subject to RCW 41.04.820, adoption and revision of a state salary schedule to reflect the prevailing rates in Washington state private industries and other governmental units.

The rates in the salary schedules or plans shall be increased if necessary to attain comparable worth under an implementation plan under RCW 41.06.155 and, for institutions of higher education and related boards, shall be competitive for positions of a similar nature in the state or the locality in which an institution of higher education or related board is located. Such adoption and revision is subject to approval by the director of financial management in accordance with chapter 43.88 RCW;

(k) Increment increases within the series of steps for each pay grade based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service. From February 18, 2009, through June 30, 2013, a salary or wage increase shall not be granted to any exempt position under this chapter, except that a salary or wage increase may be granted to employees pursuant to collective bargaining agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW, and except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(i) The salary increase can be paid within existing resources;

(ii) The salary increase will not adversely impact the provision of client services; and

(iii) For any state agency of the executive branch, not including institutions of higher education, the salary increase is approved by the director of the office of financial management;

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position exempt under this chapter shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases;

Any agency granting a salary increase from July 1, 2011, through June 30, 2013, to a position exempt under this chapter shall submit a report to the fiscal committees of the legislature by July 31, 2012, and July 31, 2013, detailing the positions for which salary increases were granted during the preceding fiscal year, the size of the increases, and the reasons for giving the increases;

(l) Optional lump sum relocation compensation approved by the agency director, whenever it is reasonably necessary that a person make a domiciliary move in accepting a transfer or other employment with the state. An agency must provide lump sum compensation within existing resources. If the person receiving the relocation payment terminates or causes termination with the state, for reasons other than layoff, disability separation, or other good cause as determined by an agency director, within one year of the date of the employment, the state is entitled to reimbursement of the lump sum compensation from the person;

(m) Providing for veteran's preference as required by existing statutes, with recognition of preference in regard to layoffs and subsequent reemployment for veterans and their surviving spouses by giving such eligible veterans and their surviving spouses additional credit in computing their seniority by adding to their unbroken state service, as defined by the director, the veteran's service in the military not to exceed five years. For the purposes of this section, "veteran" means

any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who, upon termination of such service, has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge shall be given. However, the surviving spouse of a veteran is entitled to the benefits of this section regardless of the veteran's length of active military service. For the purposes of this section, "veteran" does not include any person who has voluntarily retired with twenty or more years of active military service and whose military retirement pay is in excess of five hundred dollars per month.

(2) Rules adopted under this section by the director shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the director.

(3) Rules adopted by the director under this section may be superseded by the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and 41.80.010 through 41.80.130. The supersession of such rules shall only affect employees in the respective collective bargaining units.

(4)(a) The director shall require that each state agency report annually the following data:

(i) The number of classified, Washington management service, and exempt employees in the agency and the change compared to the previous report;

(ii) The number of bonuses and performance-based incentives awarded to agency staff and the base wages of such employees; and

(iii) The cost of each bonus or incentive awarded.

(b) A report that compiles the data in (a) of this subsection for all agencies will be provided annually to the governor and the appropriate committees of the legislature and must be posted for the public on the office of financial management's agency web site.

(5) From February 15, 2010, until June 30, 2013, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance management confirmation granted by the department of personnel under WAC 357-37-055. [2011 1st sp.s. c 43 § 407; 2011 1st sp.s. c 39 § 5. Prior: 2010 c 2 § 3; 2010 c 1 § 2; prior: 2009 c 534 § 2; 2009 c 5 § 2; 2002 c 354 § 204.]

Reviser's note: This section was amended by 2011 1st sp.s. c 39 § 5 and by 2011 1st sp.s. c 43 § 407, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Findings—Effective date—2010 c 2: See notes following RCW 41.06.070.

Effective date—2010 c 1: See note following RCW 41.06.070.

Finding—Intent—2009 c 534: "The legislature finds that information technologies have substantially altered the roles and responsibilities of employees in many state agencies since the creation of the Washington management service. With the understanding that the current economic crisis dictates finding every possible efficiency, the legislature intends to review the state's senior management and exempt services and understands that possible refinements in the service are needed. A review, in consultation with the various stakeholders and in light of current best practices, is warranted." [2009 c 534 § 1.]

Effective date—2009 c 5: See note following RCW 41.06.070.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

41.06.136 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

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

41.06.142 Purchasing services by contract—Effect on employees in the classified service—Criteria to be met—Bidding—Definitions. (1) Any department, agency, or institution of higher education may purchase services, including services that have been customarily and historically provided by employees in the classified service under this chapter, by contracting with individuals, nonprofit organizations, businesses, employee business units, or other entities if the following criteria are met:

(a) The invitation for bid or request for proposal contains measurable standards for the performance of the contract;

(b) Employees in the classified service whose positions or work would be displaced by the contract are provided an opportunity to offer alternatives to purchasing services by contract and, if these alternatives are not accepted, compete for the contract under competitive contracting procedures in subsection (4) of this section;

(c) The contract with an entity other than an employee business unit includes a provision requiring the entity to consider employment of state employees who may be displaced by the contract;

(d) The department, agency, or institution of higher education has established a contract monitoring process to measure contract performance, costs, service delivery quality, and other contract standards, and to cancel contracts that do not meet those standards; and

(e) The department, agency, or institution of higher education has determined that the contract results in savings or efficiency improvements. The contracting agency must consider the consequences and potential mitigation of improper or failed performance by the contractor.

(2) Any provision contrary to or in conflict with this section in any collective bargaining agreement in effect on July 1, 2005, is not effective beyond the expiration date of the agreement.

(3) Contracting for services that is expressly mandated by the legislature or was authorized by law prior to July 1, 2005, including contracts and agreements between public entities, shall not be subject to the processes set forth in subsections (1), (4), and (5) of this section.

(4) Competitive contracting shall be implemented as follows:

(a) At least ninety days prior to the date the contracting agency requests bids from private entities for a contract for services provided by classified employees, the contracting agency shall notify the classified employees whose positions or work would be displaced by the contract. The employees shall have sixty days from the date of notification to offer alternatives to purchasing services by contract, and the agency shall consider the alternatives before requesting bids.

(b) If the employees decide to compete for the contract, they shall notify the contracting agency of their decision. Employees must form one or more employee business units for the purpose of submitting a bid or bids to perform the services.

(c) The department of enterprise services, with the advice and assistance of the office of financial management, shall develop and make available to employee business units training in the bidding process and general bid preparation.

(d) The director of enterprise services, with the advice and assistance of the office of financial management, shall, by rule, establish procedures to ensure that bids are submitted and evaluated in a fair and objective manner and that there exists a competitive market for the service. Such rules shall include, but not be limited to: (i) Prohibitions against participation in the bid evaluation process by employees who prepared the business unit's bid or who perform any of the services to be contracted; (ii) provisions to ensure no bidder receives an advantage over other bidders and that bid requirements are applied equitably to all parties; and (iii) procedures that require the contracting agency to receive complaints regarding the bidding process and to consider them before awarding the contract. Appeal of an agency's actions under this subsection is an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act, with the final decision to be rendered by an administrative law judge assigned under chapter 34.12 RCW.

(e) An employee business unit's bid must include the fully allocated costs of the service, including the cost of the employees' salaries and benefits, space, equipment, materials, and other costs necessary to perform the function. An employee business unit's cost shall not include the state's indirect overhead costs unless those costs can be attributed directly to the function in question and would not exist if that function were not performed in state service.

(f) A department, agency, or institution of higher education may contract with the department of enterprise services to conduct the bidding process.

(5) As used in this section:

(a) "Employee business unit" means a group of employees who perform services to be contracted under this section and who submit a bid for the performance of those services under subsection (4) of this section.

(b) "Indirect overhead costs" means the pro rata share of existing agency administrative salaries and benefits, and rent, equipment costs, utilities, and materials associated with those administrative functions.

(c) "Competitive contracting" means the process by which classified employees of a department, agency, or institution of higher education compete with businesses, individ-

uals, nonprofit organizations, or other entities for contracts authorized by subsection (1) of this section.

(6) The processes set forth in subsections (1), (4), and (5) of this section do not apply to:

(a) RCW 74.13.031(5);

(b) The acquisition of printing services by a state agency; and

(c) Contracting for services or activities by the department of enterprise services under RCW 43.19.008 and the department may continue to contract for such services and activities after June 30, 2018.

(7) The processes set forth in subsections (1), (4), and (5) of this section do not apply to the consolidated technology services agency when contracting for services or activities as follows:

(a) Contracting for services and activities that are necessary to establish, operate, or manage the state data center, including architecture, design, engineering, installation, and operation of the facility that are approved by the technology services board created in RCW 43.41A.070.

(b) Contracting for services and activities recommended by the chief information officer through a business plan and approved by the technology services board created in RCW 43.41A.070. [2011 1st sp.s. c 43 § 408; 2008 c 267 § 9; 2002 c 354 § 208.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

41.06.150 Rules of director—Mandatory subjects—Personnel administration. The director shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

(1) Certification of names for vacancies;

(2) Examinations for all positions in the competitive and noncompetitive service;

(3) Appointments;

(4) Permitting agency heads to delegate the authority to appoint, reduce, dismiss, suspend, or demote employees within their agencies if such agency heads do not have specific statutory authority to so delegate: PROVIDED, That the director may not authorize such delegation to any position lower than the head of a major subdivision of the agency;

(5) Assuring persons who are or have been employed in classified positions before July 1, 1993, will be eligible for employment, reemployment, transfer, and promotion in respect to classified positions covered by this chapter;

(6) Affirmative action in appointment, promotion, transfer, recruitment, training, and career development; development and implementation of affirmative action goals and timetables; and monitoring of progress against those goals and timetables.

The director shall consult with the human rights commission in the development of rules pertaining to affirmative action.

Rules adopted under this section by the director shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the director. [2011 1st sp.s. c 43

§ 409. Prior: 2002 c 371 § 906; 2002 c 354 § 203; 2002 c 354 § 202; 2002 c 110 § 1; 1999 c 297 § 3; 1996 c 319 § 2; 1995 2nd sp.s. c 18 § 911; prior: 1993 sp.s. c 24 § 913; 1993 c 281 § 27; 1990 c 60 § 103; prior: 1985 c 461 § 2; 1985 c 365 § 5; 1983 1st ex.s. c 75 § 5; 1982 1st ex.s. c 53 § 4; prior: 1982 c 79 § 1; 1981 c 311 § 18; 1980 c 118 § 3; 1979 c 151 § 57; 1977 ex.s. c 152 § 1; 1973 1st ex.s. c 75 § 1; 1973 c 154 § 1; 1971 ex.s. c 19 § 2; 1967 ex.s. c 108 § 13; 1961 c 1 § 15 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Short title—Headings, captions not law—Severability—2002 c 354: See RCW 41.80.907 through 41.80.909.

Findings—1999 c 297: See note following RCW 43.03.125.

Leave for public employees

military: RCW 38.40.060.

vacation: RCW 43.01.040.

Public employees' collective bargaining: Chapter 41.56 RCW.

Additional notes found at www.leg.wa.gov

41.06.152 Job classification revisions, class studies, salary adjustments—Limitations. (1) The director shall adopt only those job classification revisions, class studies, and salary adjustments under RCW 41.06.157 that:

(a) As defined by the director, are due to documented recruitment or retention difficulties, salary compression or inversion, classification plan maintenance, higher level duties and responsibilities, or inequities; and

(b) Are such that the office of financial management has reviewed the affected agency's fiscal impact statement and has concurred that the affected agency can absorb the biennialized cost of the reclassification, class study, or salary adjustment within the agency's current authorized level of funding for the current fiscal biennium and subsequent fiscal biennia.

(2) This section does not apply to the higher education hospital special pay plan or to any adjustments to the classification plan under RCW 41.06.157 that are due to emergent conditions. Emergent conditions are defined as emergency conditions requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare. [2011 1st sp.s. c 43 § 410; 2007 c 489 § 1; 2002 c 354 § 241; 2002 c 354 § 240; 1999 c 309 § 914; 1996 c 319 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Additional notes found at www.leg.wa.gov

41.06.157 Comprehensive classification plan for classified positions—Contents—Salary surveys. (1) To promote the most effective use of the state's workforce and improve the effectiveness and efficiency of the delivery of services to the citizens of the state, the director shall adopt and maintain a comprehensive classification plan for all positions in the classified service. The classification plan must:

(a) Be simple and streamlined;

(b) Support state agencies in responding to changing technologies, economic and social conditions, and the needs of its citizens;

(c) Value workplace diversity;

(d) Facilitate the reorganization and decentralization of governmental services;

(e) Enhance mobility and career advancement opportunities; and

(f) Consider rates in other public employment and private employment in the state.

(2) An appointing authority and an employee organization representing classified employees of the appointing authority for collective bargaining purposes may jointly request the human resources director to initiate a classification study.

(3) For institutions of higher education and related boards, the director may adopt special salary ranges to be competitive with positions of a similar nature in the state or the locality in which the institution of higher education or related board is located.

(4) The director may undertake salary surveys of positions in other public and private employment to establish market rates. Any salary survey information collected from private employers which identifies a specific employer with salary rates which the employer pays to its employees shall not be subject to public disclosure under chapter 42.56 RCW. [2011 1st sp.s. c 43 § 411.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.162 State salary schedule. The director of financial management shall adopt and maintain a state salary schedule. Such adoption and revision is subject to approval by the director in accordance with chapter 43.88 RCW. [2011 1st sp.s. c 43 § 412.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.167 Compensation surveys required for officers and officer candidates of the Washington state patrol—Limited public disclosure exemption. The human resources director shall undertake comprehensive compensation surveys for officers and entry-level officer candidates of the Washington state patrol, with such surveys to be conducted in the year prior to the convening of every other one hundred five day regular session of the state legislature. Salary and fringe benefit survey information collected from private employers which identifies a specific employer with the salary and fringe benefit rates which that employer pays to its employees shall not be subject to public disclosure under chapter 42.56 RCW. [2011 1st sp.s. c 43 § 413; 2005 c 274 § 279; 2002 c 354 § 212; 1991 c 196 § 1; 1986 c 158 § 7; 1985 c 94 § 3; 1980 c 11 § 2; 1979 c 151 § 60; 1977 ex.s. c 152 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Part headings not law—Effective date—2005 c 274: See RCW 42.56.901 and 42.56.902.

Short title—Headings, captions not law—Severability—2002 c 354: See RCW 41.80.907 through 41.80.909.

Additional notes found at www.leg.wa.gov

[2011 RCW Supp—page 774]

41.06.169 Employee performance evaluations—Standardized procedures and forms required to be developed. After consultation with state agency heads, employee organizations, and other interested parties, the director shall develop standardized employee performance evaluation procedures and forms which shall be used by state agencies for the appraisal of employee job performance at least annually. These procedures shall include means whereby individual agencies may supplement the standardized evaluation process with special performance factors peculiar to specific organizational needs. Performance evaluation procedures shall place primary emphasis on recording how well the employee has contributed to efficiency, effectiveness, and economy in fulfilling state agency and job objectives. [2011 1st sp.s. c 43 § 414; 1985 c 461 § 3; 1982 1st ex.s. c 53 § 5; 1977 ex.s. c 152 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.170 Reduction, suspension, dismissal, demotion of employee—Right to appeal. (1) The director, in the adoption of rules governing suspensions for cause, shall not authorize an appointing authority to suspend an employee for more than fifteen calendar days as a single penalty or more than thirty calendar days in any one calendar year as an accumulation of several penalties. The director shall require that the appointing authority give written notice to the employee not later than one day after the suspension takes effect, stating the reasons for and the duration thereof.

(2) Any employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service as provided by the rules of the director, or any employee who is adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or rules adopted under it, shall have the right to appeal, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action to the Washington personnel resources board. The employee shall be furnished with specified charges in writing when a reduction, dismissal, suspension, or demotion action is taken. Such appeal shall be in writing. Decisions of the Washington personnel resources board on appeals filed after June 30, 2005, shall be final and not subject to further appeal.

(3) Any employee whose position has been exempted after July 1, 1993, shall have the right to appeal, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action to the Washington personnel resources board. If the position being exempted is vacant, the exclusive bargaining unit representative may act in lieu of an employee for the purposes of appeal.

(4) An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the Washington personnel resources board. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

(5) Subsections (1) and (2) of this section do not apply to any employee who is subject to the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and

41.80.010 through 41.80.130. [2011 1st sp.s. c 43 § 415; 2009 c 534 § 3; 2002 c 354 § 213; 1993 c 281 § 31; 1981 c 311 § 19; 1975-'76 2nd ex.s. c 43 § 3; 1961 c 1 § 17 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Finding—Intent—2009 c 534: See note following RCW 41.06.133.

Appeals filed on or before June 30, 2005—2002 c 354: "The transfer of the powers, duties, and functions of the personnel appeals board to the personnel resources board under RCW 41.06.111 and the transfer of jurisdiction for appeals filed under section 213, chapter 354, Laws of 2002 after June 30, 2005, shall not affect the right of an appellant to have an appeal filed on or before June 30, 2005, resolved by the personnel appeals board in accordance with the authorities, rules, and procedures that were established under chapter 41.64 RCW as it existed before July 1, 2004." [2002 c 354 § 214.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Additional notes found at www.leg.wa.gov

41.06.220 Reinstatement after appeal, guaranteed rights and benefits. Any employee, when fully reinstated after appeal, shall be guaranteed all employee rights and benefits, including back pay, sick leave, vacation accrual, retirement and OASDI credits. [2011 1st sp.s. c 43 § 416; 1961 c 1 § 22 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.260 Conflict with federal requirements—Effect—Rules to conform chapter. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The office of financial management and the department of enterprise services, as appropriate, shall make such rules and regulations as may be necessary to meet federal requirements which are a condition precedent to the receipt of federal funds by the state. [2011 1st sp.s. c 43 § 417; 1961 c 1 § 26 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.270 Salary withheld unless employment is in accord with chapter—Certification of payrolls, procedures. A disbursing officer shall not pay any employee holding a position covered by this chapter unless the employment is in accordance with this chapter or the rules, regulations and orders issued hereunder. The directors of enterprise services and financial management shall jointly establish procedures for the certification of payrolls. [2011 1st sp.s. c 43 § 418; 2002 c 354 § 217; 1979 c 151 § 61; 1961 c 1 § 27 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

41.06.280 Personnel service fund—Created—Charges to agencies, payment—Use, disbursement. There is hereby created a fund within the state treasury, designated as the "personnel service fund," to be used by the office of financial management and the department of enterprise services as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of this chapter, applicable provisions of chapter 41.04 RCW, and chapter 41.60 RCW. An amount not to exceed one and one-half percent of the salaries and wages for all positions in the classified service in each of the agencies subject to this chapter, except the institutions of higher education, shall be charged to the operations appropriations of each agency and credited to the personnel service fund as the allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, the amount shall be charged against the allotments pro rata, at a rate to be fixed by the director from time to time which, together with income derived from services rendered under RCW 41.06.080, will provide the office of financial management and the department of enterprise services with funds to meet its anticipated expenditures during the allotment period, including the training requirements in RCW 41.06.500 and 41.06.530.

The director shall fix the terms and charges for services rendered by the department of enterprise services and the office of financial management pursuant to RCW 41.06.080, which amounts shall be credited to the personnel service fund and charged against the proper fund or appropriation of the recipient of such services on a monthly basis. Payment for services so rendered under RCW 41.06.080 shall be made on a monthly basis to the state treasurer and deposited in the personnel service fund.

Moneys from the personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the office of financial management and the department of enterprise services. [2011 1st sp.s. c 43 § 419; 1993 c 379 § 309; 1993 c 281 § 34; 1987 c 248 § 4; 1984 c 7 § 45; 1982 c 167 § 13; 1963 c 215 § 1; 1961 c 1 § 28 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Legislative findings—Purpose—1987 c 248: See note following RCW 41.04.362.

Additional notes found at www.leg.wa.gov

41.06.285 Higher education personnel service fund. (1) There is hereby created a fund within the state treasury, designated as the "higher education personnel service fund," to be used by the office of financial management as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of chapter 41.06 RCW and applicable provisions of chapters 41.04 and 41.60 RCW. Subject to the requirements of subsection (2) of this section, an amount not to exceed one-half of one percent of the salaries and wages for all positions in the classified service shall be contributed from the operations appropriations of each institution and the state board for community and technical colleges and credited to the higher education personnel service fund as such allotments are approved pursuant

to chapter 43.88 RCW. Subject to the above limitations, such amount shall be charged against the allotments pro rata, at a rate to be fixed by the director of financial management from time to time, which will provide the office of financial management with funds to meet its anticipated expenditures during the allotment period.

(2) If employees of institutions of higher education cease to be classified under this chapter pursuant to an agreement authorized by *RCW 41.56.201, each institution of higher education and the state board for community and technical colleges shall continue, for six months after the effective date of the agreement, to make contributions to the higher education personnel service fund based on employee salaries and wages that includes the employees under the agreement. At the expiration of the six-month period, the director of financial management shall make across-the-board reductions in allotments of the higher education personnel service fund for the remainder of the biennium so that the charge to the institutions of higher education and state board for community and technical colleges based on the salaries and wages of the remaining employees of institutions of higher education and related boards classified under this chapter does not increase during the biennium, unless an increase is authorized by the legislature.

(3) Moneys from the higher education personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the office of financial management. [2011 1st sp.s. c 43 § 420; 1998 c 245 § 41; 1993 c 379 § 308.]

***Reviser's note:** RCW 41.56.201 was repealed by 2002 c 354 § 403, effective July 1, 2005.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

41.06.350 Acceptance of federal funds authorized.

The director is authorized to receive federal funds now available or hereafter made available for the assistance and improvement of public personnel administration, which may be expended in addition to the personnel service fund established by RCW 41.06.280. [2011 1st sp.s. c 43 § 421; 2002 c 354 § 218; 1993 c 281 § 36; 1969 ex.s. c 152 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Additional notes found at www.leg.wa.gov

41.06.395 Training programs on sexual harassment.

The director shall adopt rules establishing guidelines for policies, procedures, and mandatory training programs on sexual harassment for state employees to be adopted by state agencies. The department of enterprise services shall establish reporting requirements for state agencies on compliance with RCW 43.01.135. [2011 1st sp.s. c 43 § 422; 2007 c 76 § 1.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.06.400 Training and career development programs—Powers and duties of department of enterprise

[2011 RCW Supp—page 776]

services. (1) In addition to other powers and duties specified in this chapter, the department of enterprise services in consultation with the office of financial management shall:

(a) By rule, prescribe the purpose and minimum standards for training and career development programs and, in so doing, regularly consult with and consider the needs of individual agencies and employees;

(b) Provide training and career development programs which may be conducted more efficiently and economically on an interagency basis;

(c) Promote interagency sharing of resources for training and career development;

(d) Monitor and review the impact of training and career development programs to ensure that the responsibilities of the state to provide equal employment opportunities are diligently carried out.

(2) At an agency's request, the department of enterprise services may provide training and career development programs for an agency's internal use which may be conducted more efficiently and economically by the department of enterprise services. [2011 1st sp.s. c 43 § 423; 2002 c 354 § 219; 1980 c 118 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Additional notes found at www.leg.wa.gov

41.06.410 Agency training and career development plans—Budget. Each agency subject to the provisions of this chapter shall:

(1) Prepare an employee training and career development plan which shall at least meet minimum standards established by the department of enterprise services;

(2) Provide for training and career development for its employees in accordance with the agency plan;

(3) Budget for training and career development in accordance with procedures of the office of financial management. [2011 1st sp.s. c 43 § 424; 2002 c 354 § 220; 1980 c 118 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Additional notes found at www.leg.wa.gov

41.06.420 Entry-level management training course—Rules—Requirements—Suspension—Waiver—Designation of supervisory or management positions.

(1) The office of financial management, by rule, shall prescribe the conditions under which an employee appointed to a supervisory or management position after June 12, 1980, shall be required to successfully complete an entry-level management training course as approved by the director. Such training shall not be required of any employee who has completed a management training course prior to the employee's appointment which is, in the judgment of the director, at least equivalent to the entry-level course required by this section.

(2) The office of financial management, by rule, shall establish procedures for the suspension of the entry-level training requirement in cases where the ability of an agency to perform its responsibilities is adversely affected, or for the

waiver of this requirement in cases where a person has demonstrated experience as a substitute for training.

(3) Agencies subject to the provisions of this chapter, in accordance with rules prescribed by the office of financial management, shall designate individual positions, or groups of positions, as being "supervisory" or "management" positions. Such designations shall be subject to review by the director. [2011 1st sp.s. c 43 § 425; 1980 c 118 § 6.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.476 Background investigation rules—Updating. (1) The office of financial management shall amend any existing rules established under RCW 41.06.475 and adopt rules developed in cooperation and agreement with the department of social and health services to implement the provisions of chapter 296, Laws of 2001.

(2) The legislature's delegation of authority to the agency under chapter 296, Laws of 2001 is strictly limited to:

(a) The minimum delegation necessary to administer the clear and unambiguous directives of chapter 296, Laws of 2001; and

(b) The administration of circumstances and behaviors foreseeable at the time of enactment. [2011 1st sp.s. c 43 § 426; 2001 c 296 § 6.]

***Reviser's note:** 2001 c 296 attained final passage by the legislature on April 20, 2001, was signed by the governor and filed with the secretary of state on May 14, 2001, and took effect July 22, 2001.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Intent—2001 c 296: See note following RCW 9.96A.060.

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

41.06.490 State employee return-to-work program. In addition to the rules adopted under RCW 41.06.150, the director shall adopt rules establishing a state employee return-to-work program. The program shall, at a minimum:

(1) Direct each agency to adopt a return-to-work policy. The program shall allow each agency program to take into consideration the special nature of employment in the agency;

(2) Provide for eligibility in the return-to-work program, for a minimum of two years from the date the temporary disability commenced, for any permanent employee who is receiving compensation under RCW 51.32.090 and who is, by reason of his or her temporary disability, unable to return to his or her previous work, but who is physically capable of carrying out work of a lighter or modified nature;

(3) Require each agency to name an agency representative responsible for coordinating the return-to-work program of the agency;

(4) Provide that applicants receiving appointments for classified service receive an explanation of the return-to-work policy;

(5) Require training of supervisors on implementation of the return-to-work policy, including but not limited to assessment of the appropriateness of the return-to-work job for the employee; and

(6) Coordinate participation of applicable employee assistance programs, as appropriate. [2011 1st sp.s. c 43 § 427; 2002 c 354 § 223; 1990 c 204 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Findings—Purpose—1990 c 204: See note following RCW 51.44.170.

41.06.500 Managers—Rules—Goals. (1) Except as provided in RCW 41.06.070 and subject to RCW 41.04.820, notwithstanding any other provisions of this chapter, the director is authorized to adopt, after consultation with state agencies and employee organizations, rules for managers as defined in RCW 41.06.022. These rules shall not apply to managers employed by institutions of higher education or related boards or whose positions are exempt. The rules shall govern recruitment, appointment, classification and allocation of positions, examination, training and career development, hours of work, probation, certification, compensation, transfer, affirmative action, promotion, layoff, reemployment, performance appraisals, discipline, and any and all other personnel practices for managers. These rules shall be separate from rules adopted for other employees, and to the extent that the rules adopted under this section apply only to managers shall take precedence over rules adopted for other employees, and are not subject to review by the board.

(2) In establishing rules for managers, the director shall adhere to the following goals:

(a) Development of a simplified classification system that facilitates movement of managers between agencies and promotes upward mobility;

(b) Creation of a compensation system that provides flexibility in setting and changing salaries, and shall require review and approval by the director in the case of any salary changes greater than five percent proposed for any group of employees;

(c) Establishment of a performance appraisal system that emphasizes individual accountability for program results and efficient management of resources; effective planning, organization, and communication skills; valuing and managing workplace diversity; development of leadership and interpersonal abilities; and employee development;

(d) Strengthening management training and career development programs that build critical management knowledge, skills, and abilities; focusing on managing and valuing workplace diversity; empowering employees by enabling them to share in workplace decision making and to be innovative, willing to take risks, and able to accept and deal with change; promoting a workplace where the overall focus is on the recipient of the government services and how these services can be improved; and enhancing mobility and career advancement opportunities;

(e) Permitting flexible recruitment and hiring procedures that enable agencies to compete effectively with other employers, both public and private, for managers with appropriate skills and training; allowing consideration of all qualified candidates for positions as managers; and achieving affirmative action goals and diversity in the workplace;

(f) Providing that managers may only be reduced, dismissed, suspended, or demoted for cause; and

(g) Facilitating decentralized and regional administration.

(3) From February 18, 2009, through June 30, 2013, a salary or wage increase shall not be granted to any position under this section, except that increases may be granted for positions for which the employer has demonstrated difficulty retaining qualified employees if the following conditions are met:

(a) The salary increase can be paid within existing resources;

(b) The salary increase will not adversely impact the provision of client services; and

(c) For any state agency of the executive branch, not including institutions of higher education, the salary increase is approved by the director of the office of financial management.

Any agency granting a salary increase from February 15, 2010, through June 30, 2011, to a position under this section shall submit a report to the fiscal committees of the legislature no later than July 31, 2011, detailing the positions for which salary increases were granted, the size of the increases, and the reasons for giving the increases.

Any agency granting a salary increase from July 1, 2011, through June 30, 2013, to a position under this section shall submit a report to the fiscal committees of the legislature by July 31, 2012, and July 31, 2013, detailing the positions for which salary increases were granted during the preceding fiscal year, the size of the increases, and the reasons for giving the increases.

(4) From February 15, 2010, until June 30, 2013, no monetary performance-based awards or growth and development progression adjustments may be granted by the director or employers to the Washington management service employees covered by the rules adopted under this section. This subsection does not prohibit the payment of awards provided for in chapter 41.60 RCW.

From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance management confirmation granted by the department of personnel under WAC 357-37-055.

From July 1, 2011, through June 29, 2013, salaries for all positions under this section are subject to RCW 41.04.820. [2011 1st sp.s. c 39 § 6. Prior: 2010 c 2 § 4; 2010 c 1 § 3; 2009 c 5 § 3; 2002 c 354 § 243; 2002 c 354 § 242; 1996 c 319 § 4; 1993 c 281 § 9.]

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Findings—Effective date—2010 c 2: See notes following RCW 41.06.070.

Effective date—2010 c 1: See note following RCW 41.06.070.

Effective date—2009 c 5: See note following RCW 41.06.070.

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

Additional notes found at www.leg.wa.gov

41.06.510 Institutions of higher education—Designation of personnel officer. Each institution of higher education and each related board shall designate an officer who

[2011 RCW Supp—page 778]

shall perform duties as personnel officer. The personnel officer at each institution or related board shall direct, supervise, and manage administrative and technical personnel activities for the classified service at the institution or related board consistent with policies established by the institution or related board and in accordance with the provisions of this chapter and the rules adopted under this chapter. Institutions may undertake jointly with one or more other institutions to appoint a person qualified to perform the duties of personnel officer, provide staff and financial support and may engage consultants to assist in the performance of specific projects. The services of the department of enterprise services and the office of financial management may also be used by the institutions or related boards pursuant to RCW 41.06.080.

The state board for community and technical colleges shall have general supervision and control over activities undertaken by the various community colleges pursuant to this section. [2011 1st sp.s. c 43 § 428; 1993 c 281 § 10.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.530 Personnel resource and management policy—Implementation. (1) The legislature recognizes that:

(a) The labor market and the state government workforce are diverse in terms of gender, race, ethnicity, age, and the presence of disabilities.

(b) The state's personnel resource and management practices must be responsive to the diverse nature of its workforce composition.

(c) Managers in all agencies play a key role in the implementation of all critical personnel policies.

It is therefore the policy of the state to create an organizational culture in state government that respects and values individual differences and encourages the productive potential of every employee.

(2) To implement this policy:

(a) The office of financial management shall, in consultation with agencies, employee organizations, employees, institutions of higher education, and related boards, review civil service rules and related policies to ensure that they support the state's policy of valuing and managing diversity in the workplace; and

(b) The department of enterprise services, in consultation with agencies, employee organizations, and employees, institutions of higher education, and related boards, develop training programs for all managers to enhance their ability to implement diversity policies and to provide a thorough grounding in all aspects of the state civil service law and merit system rules, and how the proper implementation and application thereof can facilitate and further the mission of the agency.

(3) The department of enterprise services and the office of financial management shall coordinate implementation of this section with the institutions of higher education and related boards to reduce duplication of effort. [2011 1st sp.s. c 43 § 429; 1993 c 281 § 12.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

41.06.560 Monetary performance-based awards or incentives—Restrictions. From February 15, 2010, until June 30, 2013, no monetary performance-based awards or incentives may be granted by the director or employers to employees covered by rules adopted under this section. This section does not prohibit the payment of awards provided for in chapter 41.60 RCW.

From July 1, 2011, until June 30, 2013, no performance-based awards or incentives may be granted by the director or employers to employees pursuant to a performance management confirmation granted by the department of personnel under WAC 357-37-055. [2011 1st sp.s. c 39 § 11; 2010 c 2 § 6.]

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Findings—Effective date—2010 c 2: See notes following RCW 41.06.070.

Chapter 41.07 RCW

CENTRAL PERSONNEL-PAYROLL SYSTEM

Sections

- 41.07.020 Administration, maintenance and operation of system—Intent.
- 41.07.030 Costs.
- 41.07.900 Repealed.

41.07.020 Administration, maintenance and operation of system—Intent. The department of enterprise services is authorized to administer, maintain, and operate the central personnel-payroll system and to provide its services for any state agency designated jointly by the director of the department of enterprise services and the director of financial management.

The system shall be operated through state data processing centers. State agencies shall convert personnel and payroll processing to the central personnel-payroll system as soon as administratively and technically feasible as determined by the office of financial management and the department of enterprise services. It is the intent of the legislature to provide, through the central personnel-payroll system, for uniform reporting to the office of financial management and to the legislature regarding salaries and related costs, and to reduce present costs of manual procedures in personnel and payroll record keeping and reporting. [2011 1st sp.s. c 43 § 441; 1979 c 151 § 62; 1975 1st ex.s. c 239 § 2.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.07.030 Costs. The costs of administering, maintaining, and operating the central personnel-payroll system shall be distributed to the using state agencies. In order to insure proper and equitable distribution of costs the department of enterprise services shall utilize cost accounting procedures to identify all costs incurred in the administration, maintenance, and operation of the central personnel-payroll system. In order to facilitate proper and equitable distribution of costs to the using state agencies the department of enterprise services is authorized to utilize the data processing revolving fund created by RCW 43.19.791 and the personnel service fund created by RCW 41.06.280. [2011 1st sp.s. c 43 § 611; 2011 1st sp.s. c 43 § 442; 1975 1st ex.s. c 239 § 3.]

Reviser’s note: This section was amended by 2011 1st sp.s. c 43 § 442 and by 2011 1st sp.s. c 43 § 611, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

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

Chapter 41.26 RCW

LAW ENFORCEMENT OFFICERS’ AND FIREFIGHTERS’ RETIREMENT SYSTEM

Sections

- 41.26.030 Definitions.

41.26.030 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Accumulated contributions" means the employee’s contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(2) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member’s future benefits during the period of retirement.

(3) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(4)(a) "Basic salary" for plan 1 members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan 2 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member’s basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member’s actual basic salary received for non-legislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall

be paid by the member for both member and employer contributions.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically disabled as determined by the department, except a person who is disabled and in the full time care of a state institution, who is:

- (i) A natural born child;
- (ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;
- (iii) A posthumous child;
- (iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(7) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(8) "Director" means the director of the department.

(9) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW 41.26.110.

(10) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan 1 members.

(11) "Disability retirement" for plan 1 members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(12) "Domestic partners" means two adults who have registered as domestic partners under RCW 26.60.020.

(13) "Employee" means any law enforcement officer or firefighter as defined in subsections (16) and (18) of this section.

(14)(a) "Employer" for plan 1 members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or firefighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the firefighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or divi-

sion of which is composed of at least sixty percent law enforcement officers or firefighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or firefighter:

- (i) The legislative authority of any city, town, county, or district;
- (ii) The elected officials of any municipal corporation;
- (iii) The governing body of any other general authority law enforcement agency; or
- (iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(15)(a) "Final average salary" for plan 1 members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan 2 members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(c) In calculating final average salary under (a) or (b) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer; and

(ii) Any compensation forgone by a member employed by the state or a local government employer during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases.

(16) "Firefighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires

passing a civil service examination for firefighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time firefighter where the fire department does not have a civil service examination;

(c) Supervisory firefighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (16)(d) shall not apply to plan 2 members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (16)(e) shall not apply to plan 2 members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for firefighter;

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW; and

(h) Any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician.

(17) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections.

(18) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under subsection (14) of this section) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (18)(d) shall not apply to plan 2 members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (18)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(19) "Medical services" for plan 1 members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic X-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(20) "Member" means any firefighter, law enforcement officer, or other person as would apply under subsections (16) or (18) of this section whose membership is transferred to the Washington law enforcement officers' and firefighters' retirement system on or after March 1, 1970, and every law enforcement officer and firefighter who is employed in that capacity on or after such date.

(21) "Plan 1" means the law enforcement officers' and firefighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(22) "Plan 2" means the law enforcement officers' and firefighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(23) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(24) "Regular interest" means such rate as the director may determine.

(25) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(26) "Retirement fund" means the "Washington law enforcement officers' and firefighters' retirement system fund" as provided for herein.

(27) "Retirement system" means the "Washington law enforcement officers' and firefighters' retirement system" provided herein.

(28)(a) "Service" for plan 1 members, means all periods of employment for an employer as a firefighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a firefighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160, or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan 2 members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(29) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(32) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(33) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW

41.26.162. [2011 1st sp.s. c 5 § 1; 2010 2nd sp.s. c 1 § 903; 2010 1st sp.s. c 32 § 6. Prior: 2009 c 523 § 3; 2005 c 459 § 1; 2003 c 388 § 2; 2002 c 128 § 3; prior: 1996 c 178 § 11; 1996 c 38 § 2; prior: 1994 c 264 § 14; 1994 c 197 § 5; prior: 1993 c 502 § 1; 1993 c 322 § 1; 1991 sp.s. c 12 § 1; prior: (1991 sp.s. c 11 § 3 repealed by 1991 sp.s. c 12 § 3); 1991 c 365 § 35; 1991 c 343 § 14; 1991 c 35 § 13; 1987 c 418 § 1; 1985 c 13 § 5; 1984 c 230 § 83; 1981 c 256 § 4; 1979 ex.s. c 249 § 2; 1977 ex.s. c 294 § 17; 1974 ex.s. c 120 § 1; 1972 ex.s. c 131 § 1; 1971 ex.s. c 257 § 6; 1970 ex.s. c 6 § 1; 1969 ex.s. c 209 § 3.]

Effective date—2011 1st sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2011." [2011 1st sp.s. c 5 § 7.]

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—1981 c 256: "It is the primary purpose of this act to assure that the provisions of RCW 41.04.250 and 41.04.260 and of any deferred compensation plan established thereunder, are in conformity with the requirements of 26 U.S.C. Sec. 457 and any other requirements of federal law relating to such a deferred compensation plan. This act shall be construed in such a manner as to accomplish this purpose." [1981 c 256 § 1.]

Purpose—1971 ex.s. c 257: "It is the purpose of this act to provide minimum medical and health standards for membership coverage into the Washington law enforcement officers' and firefighters' retirement system act, for the improvement of the public service, and to safeguard the integrity and actuarial soundness of their pension systems, and to improve their retirement and pension systems and related provisions." [1971 ex.s. c 257 § 1.]

Additional notes found at www.leg.wa.gov

**Chapter 41.32 RCW
TEACHERS' RETIREMENT**

Sections

41.32.010	Definitions.
41.32.483	Annual increase amount—Legislature's rights reserved—No additional increases after June 30, 2011.
41.32.4851	Minimum retirement allowance—Annual adjustment—Persons who become beneficiaries after June 30, 1995.
41.32.489	Retirement allowance—Annual increases restricted after July 1, 2010—Eligibility.
41.32.570	Postretirement employment—Reduction or suspension of pension payments. (<i>Effective January 1, 2012.</i>)
41.32.800	Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement.
41.32.802	Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership.
41.32.836	Higher education faculty—Option to transfer to plan 3—Limitation on supplemental benefits under RCW 28B.10.400.
41.32.860	Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement.
41.32.862	Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership.

41.32.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1)(a) "Accumulated contributions" for plan 1 members, means the sum of all regular annuity contributions and, except for the purpose of withdrawal at the time of retirement, any amount paid under RCW 41.50.165(2) with regular interest thereon.

(b) "Accumulated contributions" for plan 2 members, means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(5) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(6) "Average final compensation" for plan 2 and plan 3 members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(7)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(8) "Contract" means any agreement for service and compensation between a member and an employer.

(9) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan 1 members.

(10) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(11) "Dependent" means receiving one-half or more of support from a member.

(12) "Director" means the director of the department.

(13) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan 1 members.

(14)(a) "Earnable compensation" for plan 1 members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(ii) For an employee member of the retirement system teaching in an extended school year program, two consecutive extended school years, as defined by the employer school district, may be used as the annual period for determining earnable compensation in lieu of the two fiscal years.

(iii) "Earnable compensation" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been received for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(iv) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, a psychologist, a social worker, a nurse, a physical therapist, an occupational therapist, a speech language pathologist or audiologist, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(v) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Earnable compensation" for plan 2 and plan 3 members also includes the following actual or imputed payments

which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(c) In calculating earnable compensation under (a) or (b) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer; and

(ii) Any compensation forgone by a member during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary reductions.

(15)(a) "Eligible position" for plan 2 members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan 2 and plan 3 on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(16) "Employed" or "employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt

rules and interpret this subsection consistent with common law.

(17) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(18) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(19) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(20) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items compiled by the bureau of labor statistics, United States department of labor.

(21) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(22) "Index B" means the index for the year prior to index A.

(23) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(24) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(25) "Member" means any teacher included in the membership of the retirement system who has not been removed from membership under RCW 41.32.878 or 41.32.768. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(26) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(27) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(28) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan 1 members.

(29) "Pension" means the moneys payable per year during life from the pension reserve.

(30) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(31) "Plan 1" means the teachers' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(32) "Plan 2" means the teachers' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and prior to July 1, 1996.

(33) "Plan 3" means the teachers' retirement system, plan 3 providing the benefits and funding provisions covering persons who first become members of the system on and after July 1, 1996, or who transfer under RCW 41.32.817.

(34) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan 1 members.

(35) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan 1 members.

(36) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(37) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan 1 members.

(38) "Regular interest" means such rate as the director may determine.

(39) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(40)(a) "Retirement allowance" for plan 1 members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan 2 and plan 3 members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(41) "Retirement system" means the Washington state teachers' retirement system.

(42) "Separation from service or employment" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.32.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this section.

(43)(a) "Service" for plan 1 members means the time during which a member has been employed by an employer for compensation.

(i) If a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132.

(ii) Any other member employed in an eligible position or as a substitute who earns earnable compensation during the period from September through August shall receive service credit according to one of the following methods, whichever provides the most service credit to the member:

(A) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(B) If a member is employed in an eligible position or as a substitute teacher for at least five months of a six-month period between September through August of the following year and earns earnable compensation for six hundred thirty or more hours within the six-month period, he or she will receive a maximum of six service credit months for the school year, which shall be recorded as one service credit month for each month of the six-month period;

(C) All other members employed in an eligible position or as a substitute teacher shall receive service credit as follows:

(I) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(II) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(III) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

(iii) Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

(iv) When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(v) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service

credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(vi) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(vii) The department shall adopt rules implementing this subsection.

(44) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(45) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(46) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(47) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(48) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(49) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature. [2011 1st sp.s. c 5 § 2. Prior: 2010 2nd sp.s. c 1 § 904; 2010 1st sp.s. c 32 § 7; prior: 2008 c 204 § 1; 2008 c 175 § 1; prior: 2007 c 398 § 3; 2007 c 50 § 1; prior: 2005 c 131 § 8; 2005 c 23 § 1; 2003 c 31 § 1; 1997 c 254 § 3; 1996 c 39 § 1; prior: 1995 c 345 § 9; 1995 c 239 § 102; prior: 1994 c 298 § 3; 1994 c 247 § 2; 1994 c 197 § 12; 1993 c 95 § 7; prior: 1992 c 212 § 1; 1992 c 3 § 3; prior: 1991 c 343 § 3; 1991 c 35 § 31; 1990 c 274 § 2; 1987 c 265 § 1; 1985 c 13 § 6; prior: 1984 c 256 § 1; 1984 c 5 § 1; 1983 c 5 § 1; 1982 1st ex.s. c 52 § 6; 1981 c 256 § 5; 1979 ex.s. c 249 § 5; 1977 ex.s. c 293 § 18; 1975 1st ex.s. c 275 § 149; 1974 ex.s. c 199 § 1; 1969 ex.s. c 176 § 95; 1967 c 50 § 11; 1965 ex.s. c 81 § 1; 1963 ex.s. c 14 § 1; 1955 c 274 § 1; 1947 c 80 § 1; Rem. Supp. 1947 § 4995-20; prior: 1941 c 97 § 1; 1939 c 86 § 1; 1937 c 221 § 1; 1931 c 115 § 1; 1923 c 187 § 1; 1917 c 163 § 1; Rem. Supp. 1941 § 4995-1.]

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Findings—2007 c 398: See note following RCW 28A.405.415.

Effective date—2005 c 131: See note following RCW 41.40.823.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Intent—1994 c 298: See note following RCW 41.40.010.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 274: "(1) The current system for calculating service credit for school district employees is difficult and costly to administer. By changing from the current hours per month calculation to an hours per year calculation, the accumulation of service credit by school district employees will be easier to understand and to administer.

(2) The current system for granting service credit for substitute teachers is difficult and costly to administer. By notifying substitute teachers of their eligibility for service credit and allowing the substitute teacher to apply for service credit, the accumulation of service credit by substitute teachers will be easier to understand and to administer.

(3) Currently, temporary employees in eligible positions in the public employees' retirement system are exempted from membership in the system for up to six months. If the position lasts for longer than six months the employee is made a member retroactively. This conditional exemption causes tracking problems for the department of retirement systems and places a heavy financial burden for back contributions on a temporary employee who crosses the six-month barrier. Under the provisions of this act all persons, other than retirees, who are hired in an eligible position will become members immediately, thereby alleviating the problems described in this section.

(4) The legislature finds that retirees from the plan 2 systems of the law enforcement officers' and firefighters' retirement system, the teachers' retirement system, and the public employees' retirement system, may not work for a nonfederal public employer without suffering a suspension of their retirement benefits. This fails to recognize the current and projected demographics indicating the decreasing workforce and that the expertise possessed by retired workers can provide a substantial benefit to the state. At the same time, the legislature recognizes that a person who is working full time should have his or her pension delayed until he or she enters full or partial retirement. By allowing plan 2 retirees to work in ineligible positions, the competing concerns listed above are both properly addressed." [1990 c 274 § 1.]

Intent—Reservation—1990 c 274 §§ 2, 4: "(1) The 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 are intended by the legislature to effect administrative, rather than substantive, changes to the affected retirement plan. The legislature therefore reserves the right to revoke or amend the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450. No member is entitled to have his or her service credit calculated under the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 as a matter of contractual right.

(2) The department's retroactive application of the changes made in RCW 41.32.010(27)(b) to all service rendered between October 1, 1977, and August 31, 1990, is consistent with the legislative intent of the 1990 changes to RCW 41.32.010(27)(b)." [1994 c 177 § 10; 1990 c 274 § 18.]

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Reviser's note: (1) "Subsection (3) of section 4 of this 1974 amendatory act" is codified as RCW 41.32.498(3).

(2) Sections 1 and 2 of 1974 ex.s. c 199 consist of amendments to RCW 41.32.010 and 41.32.260. For amendatory language, a portion of which was vetoed, see the 1973-1974 session laws.

(3) "this 1974 amendatory act" [1974 ex.s. c 199] is codified in RCW

41.32.010, 41.32.260, 41.32.497, 41.32.498, and 41.32.4945. The effective date of 1974 ex.s. c 199 is May 6, 1974.

Additional notes found at www.leg.wa.gov

41.32.483 Annual increase amount—Legislature's rights reserved—No additional increases after June 30, 2011. (1) Beginning July 1, 2009, the annual increase amount as defined in RCW 41.32.010(4) shall be increased by an amount equal to \$0.40 per month per year of service minus the 2008 gain-sharing increase amount under *RCW 41.31.010 as it exists on July 22, 2007. This adjustment shall not decrease the annual increase amount, and is not to exceed \$0.20 per month per year of service. The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has the contractual right to receive this adjustment to the annual increase amount not granted prior to that time.

(2) The adjustment to the annual increase amount as set forth in section 5, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. If the repeal of **chapter 41.31 RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then this adjustment to the annual increase amount shall not be included in future annual increase amounts paid on or after the date of such reinstatement.

(3) No additional annual increase under this section shall be provided after June 30, 2011. [2011 c 362 § 2; 2007 c 491 § 5.]

Reviser's note: *(1) RCW 41.31.010 was repealed by 2007 c 491 § 13, effective January 2, 2008.

** (2) Chapter 41.31 RCW was repealed by 2007 c 491 § 13, effective January 2, 2008.

Finding—Intent—2011 c 362: "Chapter 561, Laws of 2009 made necessary changes to the funding plan for the fiscal integrity of the teachers' retirement system, plan 1 and the public employees' retirement system, plan 1, and provides a basis for improvements in the financial soundness of the pension plans. The legislature now finds that changing economic conditions have also made necessary the amendatory provisions contained in this act. Due to the current extraordinary economic recession and due to the financial demands of other core responsibilities of government, it is not feasible for public employers of this state to fund the annual increase amount and continue to ensure the fiscal integrity of these pension funds. The legislature further clarifies and affirms that the intent of the legislature in section 5, chapter 345, Laws of 1995 and this act is to not create any contractual rights to the annual increase amount on the part of the public employees' retirement system, plan 1 and the teachers' retirement system, plan 1 members or retirees. Having reserved the right to amend or repeal these provisions in RCW 41.32.489(6) and 41.40.197(5), the legislature is now exercising that right through this act." [2011 c 362 § 1.]

Effective date—2011 c 362: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2011." [2011 c 362 § 10.]

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.32.4851 Minimum retirement allowance—Annual adjustment—Persons who become beneficiaries after June 30, 1995. (1) No one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) If the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a temporary disability benefit under RCW 41.32.540 shall not be eligible for the benefit provided by this section.

(5) Beginning July 1, 2011, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with either (a) at least twenty years of service and who has been retired at least twenty-five years, or (b) at least twenty-five years of service and who has been retired at least twenty years, shall be one thousand five hundred dollars per month. On July 1, 2011, and each year thereafter, the minimum benefit in this subsection shall be increased by three percent, rounded to the nearest cent. [2011 c 362 § 4; 2006 c 244 § 1; 2004 c 85 § 1; 1995 c 345 § 3.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2006 c 244: "This act takes effect July 1, 2006." [2006 c 244 § 3.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.32.489 Retirement allowance—Annual increases restricted after July 1, 2010—Eligibility. (1) Beginning July 1, 1995, and annually thereafter through July 1, 2010, the retirement allowance of a person meeting the requirements of this section shall be increased by the annual increase amount.

(a) After July 1, 2010, those currently receiving benefits under this section will receive no additional annual increase amounts above the amount in effect on July 1, 2010, except for those who qualify under subsections (2)(b) and (3)(a) of this section. This subsection shall not reduce retirement allowances below the amounts in effect on June 30, 2011.

(b) After July 1, 2010, no annual increase amounts may be provided to any beneficiaries who are not already receiving benefits under this section, except for those who qualify under subsections (2)(b) and (3)(a) of this section.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary who has received a retirement allowance for at least one year by July 1st in the calendar year in which the annual increase is given and has attained at least age sixty-six by December 31st in the calendar year in which the annual increase is given; or

(b) A beneficiary whose retirement allowance is lower than the minimum benefit provided under RCW 41.32.4851.

(3) The following persons shall also be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary receiving the minimum benefit on June 30, 1995, under RCW 41.32.485; or

(b) A recipient of a survivor benefit on June 30, 1995, which has been increased by *RCW 41.32.575.

(4) If otherwise eligible, those receiving an annual adjustment under RCW 41.32.530(1)(d) shall be eligible for

the annual increase adjustment in addition to the benefit that would have been received absent this section.

(5) Those receiving a temporary disability benefit under RCW 41.32.540 shall not be eligible for the benefit provided by this section.

(6) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time. [2011 c 362 § 3; 2007 c 89 § 2; 1995 c 345 § 2.]

*Reviser's note: RCW 41.32.575 was repealed by 1995 c 345 § 11.

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2007 c 89: See note following RCW 41.40.197.

Intent—1995 c 345: "The intent of this act is to:

(1) Simplify the calculation of postretirement adjustments so that they can be more easily communicated to plan 1 active and retired members;

(2) Provide postretirement adjustments based on years of service rather than size of benefit;

(3) Provide postretirement adjustments at an earlier age;

(4) Provide postretirement adjustments to a larger segment of plan 1 retirees; and

(5) Simplify administration by reducing the number of plan 1 postretirement adjustments to one." [1995 c 345 § 1.]

Additional notes found at www.leg.wa.gov

41.32.570 Postretirement employment—Reduction or suspension of pension payments. (Effective January 1, 2012.)

(1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any monthly benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) Any retired teacher or retired administrator who enters service in any public educational institution in Washington state at least one calendar month after his or her accrual date shall cease to receive pension payments while engaged in such service, after the retiree has rendered service for more than eight hundred sixty-seven hours in a school year.

(3) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five hundred twenty-five hours per year without a reduction of his or her pension. [2011 1st sp.s. c 47 § 10; 2007 c 50 § 3; 2003 c 295 § 6. Prior: 2001 2nd sp.s. c 10 § 3; (2001 c 317 § 1 repealed by 2003 c 412 § 3); 1999 c 387 § 1; 1997 c 254 § 5; 1995 c 264 § 1; 1994 c 69 § 2; 1989 c 273 § 29; 1986 c 237 § 1; 1967 c 151 § 5; 1959 c 37 § 3; 1955 c 274 § 30; 1947 c 80 § 57; Rem. Supp. 1947 § 4995-76.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective dates—2001 2nd sp.s. c 10: See note following RCW 41.40.037.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—1994 c 69: "The legislature finds that there is a shortage of certificated substitute teachers in many regions of the state, and that this shortage will likely increase in the coming years. The legislature further finds that one method of reducing this shortage of substitute teachers is to encourage retired teachers to serve as substitutes by increasing the number of days they can work without affecting their retirement payments." [1994 c 69 § 1.]

Contract rights of retirees hired for postretirement employment: RCW 28A.405.900.

Additional notes found at www.leg.wa.gov

41.32.800 Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement. (1) Except as provided in RCW 41.32.802, no retiree under the provisions of plan 2 shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.37.010, or 41.35.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400.

If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section. [2011 1st sp.s. c 47 § 11; 2004 c 242 § 55; 1998 c 341 § 605; 1997 c 254 § 6; 1990 c 274 § 13; 1977 ex.s. c 293 § 11.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Additional notes found at www.leg.wa.gov

41.32.802 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section, may work up to

eight hundred sixty-seven hours per calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a firefighter or law enforcement officer, as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.32.044, he or she terminates his or her retirement status and immediately becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible. [2011 1st sp.s. c 47 § 12; 2004 c 242 § 61; 2001 2nd sp.s. c 10 § 8; 1997 c 254 § 8.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Effective dates—2001 2nd sp.s. c 10: See note following RCW 41.40.037.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

41.32.836 Higher education faculty—Option to transfer to plan 3—Limitation on supplemental benefits under RCW 28B.10.400. (1) All faculty members who are first employed by an institution of higher education in a position eligible for participation in old age annuities or retirement income plans under chapter 28B.10 RCW on or after July 1, 2011, have a period of thirty days to make an irrevocable choice to:

(a) Become a member of the teachers' retirement system plan 3 under this chapter; or

(b) Participate in the annuities or retirement income plan provided by the institution.

(2) At the end of thirty days, if the member has not made a choice to become a member of the teachers' retirement system, he or she becomes a participant in the institution's plan under RCW 28B.10.400, but does not become eligible for any supplemental benefit under RCW 28B.10.400(1)(c). [2011 1st sp.s. c 47 § 9.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

41.32.860 Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement. (1) Except under RCW 41.32.862, no retiree shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, 41.35.010, or 41.37.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused the suspension of benefits. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department. [2011 1st sp.s. c 47 § 13; 2005 c 327 § 2; 2001 2nd sp.s. c 10 § 9; 1997 c 254 § 7; 1995 c 239 § 110.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective dates—2001 2nd sp.s. c 10: See note following RCW 41.40.037.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.32.862 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section, may work up to eight hundred sixty-seven hours per calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a firefighter or law enforcement officer, as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.32.044, he or she terminates his or her retirement status and immediately becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible. [2011 1st sp.s. c 47 § 14; 2004 c 242 § 62; 2001 2nd sp.s. c 10 § 10; 1997 c 254 § 9.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Effective dates—2001 2nd sp.s. c 10: See note following RCW 41.40.037.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Chapter 41.34 RCW

PLAN 3 RETIREMENT SYSTEM CONTRIBUTIONS

Sections

41.34.060	Members' accounts—Investment—Election.
41.34.130	Self-directed investment—Default investment options— Duties of state investment board and department— Expenses—Recordkeeping.
41.34.140	Liability for loss or deficiencies—Limitations.

41.34.060 Members' accounts—Investment—Election. (1) Members may select investments as provided in

[2011 RCW Supp—page 790]

subsections (2) and (4) of this section. If a member of the public employees' retirement system entering plan 3 under RCW 41.40.785, a member of the teachers' retirement system entering plan 3 under RCW 41.32.835, or a member of the school employees' retirement system entering plan 3 under RCW 41.35.610 does not select investments, the member's account shall be invested in the default investment option of the retirement strategy fund that is closest to the retirement target date of the member. Retirement strategy fund means one of several diversified asset allocation portfolios managed by investment advisors under contract to the state investment board. The asset mix of the portfolios adjusts over time depending on a target retirement date.

(2) Members may elect to have their account invested by the state investment board. In order to reduce transaction costs and address liquidity issues, based upon recommendations of the state investment board, the department may require members to provide up to ninety days' notice prior to moving funds from the state investment board portfolio to self-directed investment options provided under subsection (4) of this section.

(a) For members of the retirement system as provided for in chapter 41.32 RCW of plan 3, investment shall be in the same portfolio as that of the teachers' retirement system combined plan 2 and 3 fund under RCW 41.50.075(2).

(b) For members of the retirement system as provided for in chapter 41.35 RCW of plan 3, investment shall be in the same portfolio as that of the school employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(4).

(c) For members of the retirement system as provided for in chapter 41.40 RCW of plan 3, investment shall be in the same portfolio as that of the public employees' retirement system combined plan 2 and 3 fund under RCW 41.50.075(3).

(3) The state investment board shall declare monthly unit values for the portfolios or funds, or portions thereof, utilized under subsection (2)(a), (b), and (c) of this section. The declared values shall be an approximation of portfolio or fund values, based on internal procedures of the state investment board. Such declared unit values and internal procedures shall be in the sole discretion of the state investment board. The state investment board may delegate any of the powers and duties under this subsection, including discretion, pursuant to RCW 43.33A.030. Member accounts shall be credited by the department with a rate of return based on changes to such unit values.

(4) Members may elect to self-direct their investments as set forth in RCW 41.34.130 and 43.33A.190. [2011 c 80 § 2; 2001 c 180 § 2; 2000 c 247 § 404; 1999 c 265 § 1; 1998 c 341 § 303; 1996 c 39 § 15; 1995 c 239 § 206.]

Effective date—2001 c 180 §§ 1 and 2: See note following RCW 41.45.061.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Additional notes found at www.leg.wa.gov

41.34.130 Self-directed investment—Default investment options—Duties of state investment board and department—Expenses—Recordkeeping. (1) The state investment board has the full authority to invest all self-directed investment moneys in accordance with RCW

43.84.150 and 43.33A.140, the default investment options set forth in RCW 41.34.060(1), and cumulative investment directions received pursuant to RCW 41.34.060 and this section. In carrying out this authority the state investment board, after consultation with the department regarding any recommendations made pursuant to RCW 41.50.088(1)(b), shall provide a set of options for members to choose from for self-directed investment.

(2) All investment and operating costs of the state investment board associated with making self-directed investments or the default investment options set forth in RCW 41.34.060(1) shall be paid by members and recovered under procedures agreed to by the department and the state investment board pursuant to the principles set forth in RCW 43.33A.160 and 43.84.160. All other expenses caused by self-directed investment shall be paid by the member in accordance with rules established by the department under RCW 41.50.088. With the exception of these expenses, all earnings from self-directed investments shall accrue to the member's account.

(3)(a)(i) The department shall keep or cause to be kept full and adequate accounts and records of each individual member's account. The department shall account for and report on the investment of defined contribution assets or may enter into an agreement with the state investment board for such accounting and reporting under this chapter.

(ii) The department's duties related to individual participant accounts include conducting the activities of trade instruction, settlement activities, and direction of cash movement and related wire transfers with the custodian bank and outside investment firms.

(iii) The department has sole responsibility for contracting with any recordkeepers for individual participant accounts and shall manage the performance of recordkeepers under those contracts.

(b)(i) The department's duties under (a)(ii) of this subsection do not limit the authority of the state investment board to conduct its responsibilities for asset management and balancing of the deferred compensation funds.

(ii) The state investment board has sole responsibility for contracting with outside investment firms to provide investment management for the deferred compensation funds and shall manage the performance of investment managers under those contracts.

(c) The state treasurer shall designate and define the terms of engagement for the custodial banks. [2011 c 80 § 1; 2010 1st sp.s. c 7 § 34; 2001 c 181 § 3; 1998 c 341 § 307.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Additional notes found at www.leg.wa.gov

41.34.140 Liability for loss or deficiencies—Limitations. (1) A state board or commission, agency, or any officer, employee, or member thereof is not liable for any loss or deficiency resulting from member defined contribution investments selected, made, or required pursuant to RCW 41.34.060 (1), (2), or (4).

(2) Neither the department, nor director or any employee, nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from a member investment in the default

option pursuant to RCW 41.34.060(1) or reasonable efforts to implement investment directions pursuant to RCW 41.34.060 (1), (2), or (4).

(3) The state investment board, or any officer, employee, or member thereof is not liable with respect to any declared monthly unit valuations or crediting of rates of return, or any other exercise of powers or duties, including discretion, under RCW 41.34.060(3).

(4) The department, or any officer or employee thereof, is not liable for crediting rates of return which are consistent with the state investment board's declaration of monthly unit valuations pursuant to RCW 41.34.060(3). [2011 c 80 § 3; 2010 1st sp.s. c 7 § 35; 1999 c 265 § 2; 1998 c 341 § 308.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Additional notes found at www.leg.wa.gov

Chapter 41.35 RCW

WASHINGTON SCHOOL EMPLOYEES' RETIREMENT SYSTEM

Sections

41.35.010	Definitions.
41.35.060	Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership.
41.35.230	Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Exceptions—Reinstatement.

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

(1) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(5)(a) "Average final compensation" for plan 2 and plan 3 members means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(b) In calculating average final compensation under (a) of this subsection, the department of retirement systems shall include any compensation forgone by a member during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not

include elimination of previously agreed upon future salary reductions.

(6) "Beneficiary" for plan 2 and plan 3 members means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(7) "Classified employee" means an employee of a school district or an educational service district who is not eligible for membership in the teachers' retirement system established under chapter 41.32 RCW.

(8)(a) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under this (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(9) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(10) "Director" means the director of the department.

(11) "Eligible position" means any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(12) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(13) "Employer," for plan 2 and plan 3 members, means a school district or an educational service district.

(14) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(15) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(16) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(17) "Index B" means the index for the year prior to index A.

(18) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (22) of this section.

(19) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(20) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.35.030.

(21) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(22) "Membership service" means all service rendered as a member.

(23) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(24) "Plan 2" means the Washington school employees' retirement system plan 2 providing the benefits and funding provisions covering persons who first became members of the public employees' retirement system on and after October 1, 1977, and transferred to the Washington school employees' retirement system under RCW 41.40.750.

(25) "Plan 3" means the Washington school employees' retirement system plan 3 providing the benefits and funding provisions covering persons who first became members of the system on and after September 1, 2000, or who transfer from plan 2 under RCW 41.35.510.

(26) "Regular interest" means such rate as the director may determine.

(27) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this

chapter resulting from service rendered to an employer while a member.

(28) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(29) "Retirement allowance" for plan 2 and plan 3 members means monthly payments to a retiree or beneficiary as provided in this chapter.

(30) "Retirement system" means the Washington school employees' retirement system provided for in this chapter.

(31) "Separation from service" occurs when a person has terminated all employment with an employer.

(32) "Service" for plan 2 and plan 3 members means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.35.180. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(c) For purposes of plan 2 and 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(i) Less than eleven days equals one-quarter service credit month;

(ii) Eleven or more days but less than twenty-two days equals one-half service credit month;

(iii) Twenty-two days equals one service credit month;

(iv) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month; and

(v) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(33) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(34) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(37) "State treasurer" means the treasurer of the state of Washington.

(38) "Substitute employee" means a classified employee who is employed by an employer exclusively as a substitute for an absent employee. [2011 1st sp.s. c 5 § 3; 2003 c 157 § 1; 2001 c 180 § 3; 1998 c 341 § 2.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

41.35.060 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reestablishment of membership.

(1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours per calendar year in an eligible position, as defined in RCW 41.32.010, 41.35.010, 41.37.010, or 41.40.010, or as a firefighter or law enforcement officer, as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.35.030, he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.35.420 or 41.35.680. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated. [2011 1st sp.s. c 47 § 15; 2004 c 242 § 64; 2001 2nd sp.s. c 10 § 11; 1998 c 341 § 7.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Effective dates—2001 2nd sp.s. c 10: See note following RCW 41.40.037.

41.35.230 Suspension of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Exceptions—Reinstatement.

(1) Except as provided in RCW 41.35.060, no retiree under the provisions of plan 2 shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.35.010, 41.40.010, 41.37.010, or 41.32.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, or in a position covered by annu-

ity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [2011 1st sp.s. c 47 § 16; 2004 c 242 § 56; 1998 c 341 § 24.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Chapter 41.37 RCW

WASHINGTON PUBLIC SAFETY EMPLOYEES' RETIREMENT SYSTEM

Sections

41.37.010	Definitions.
41.37.050	Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement of membership.

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

(1) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(5)(a) "Average final compensation" means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.37.290.

(b) In calculating average final compensation under (a) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by a member employed by a state agency or institution during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the

employer's expenditure reduction efforts, as certified by the employer; and

(ii) Any compensation forgone by a member employed by the state or a local government employer during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases.

(6) "Beneficiary" means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(7)(a) "Compensation earnable" for members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude non-money maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.37.060;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared

to report immediately for work, if the need arises, although the need may not arise.

(8) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(9) "Director" means the director of the department.

(10) "Eligible position" means any permanent, full-time position included in subsection (19) of this section.

(11) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(12) "Employer" means the Washington state department of corrections, the Washington state parks and recreation commission, the Washington state gambling commission, the Washington state patrol, the Washington state department of natural resources, and the Washington state liquor control board; any county corrections department; any city corrections department not covered under chapter 41.28 RCW; and any public corrections entity created under RCW 39.34.030 by counties, cities not covered under chapter 41.28 RCW, or both.

(13) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(14) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(15) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(16) "Index B" means the index for the year prior to index A.

(17) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (10) of this section.

(18) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(19) "Member" means any employee employed by an employer on a full-time basis:

(a) Who is in a position that requires completion of a certified criminal justice training course and is authorized by their employer to arrest, conduct criminal investigations, enforce the criminal laws of the state of Washington, and carry a firearm as part of the job;

(b) Whose primary responsibility is to ensure the custody and security of incarcerated or probationary individuals as a corrections officer, probation officer, or jailer;

(c) Who is a limited authority Washington peace officer, as defined in RCW 10.93.020, for an employer; or

(d) Whose primary responsibility is to supervise members eligible under this subsection.

(20) "Membership service" means all service rendered as a member.

(21) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(22) "Plan" means the Washington public safety employees' retirement system plan 2.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(25) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(26) "Retirement allowance" means monthly payments to a retiree or beneficiary as provided in this chapter.

(27) "Retirement system" means the Washington public safety employees' retirement system provided for in this chapter.

(28) "Separation from service" occurs when a person has terminated all employment with an employer.

(29) "Service" means periods of employment by a member on or after July 1, 2006, for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(30) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(31) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(34) "State treasurer" means the treasurer of the state of Washington. [2011 1st sp.s. c 5 § 4; 2011 c 68 § 1. Prior: 2010 2nd sp.s. c 1 § 905; 2010 1st sp.s. c 32 § 8; prior: 2007 c 492 § 11; 2007 c 294 § 1; 2006 c 309 § 2; 2005 c 327 § 4; 2004 c 242 § 2.]

Reviser's note: This section was amended by 2011 c 68 § 1 and by 2011 1st sp.s. c 5 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Retroactive application—2011 c 68: "This act applies retroactively to any public corrections entity existing on or after January 1, 2011." [2011 c 68 § 2.]

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Effective date—2006 c 309: See note following RCW 41.37.005.

Effective date—2005 c 327 §§ 4-7: "Sections 4 through 7 of this act take effect July 1, 2006." [2005 c 327 § 12.]

41.37.050 Reduction of retirement allowance upon reemployment or if covered by a plan under RCW 28B.10.400—Reinstatement of membership. (1)(a) If a retiree enters employment in an eligible position with an employer as defined in this chapter sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) If a retiree enters employment in an eligible position with an employer as defined in chapter 41.32, 41.35, or 41.40 RCW sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(c) The benefit reduction provided in (a) and (b) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section may work up to eight hundred sixty-seven hours per calendar year in an eligible position as defined in RCW 41.32.010, 41.35.010, or 41.40.010, or as a law enforcement officer or firefighter as defined in RCW 41.26.030, or in a position covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400, without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under this chapter, he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with this chapter. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy. [2011 1st sp.s. c 47 § 17; 2005 c 327 § 6; 2004 c 242 § 8.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

[2011 RCW Supp—page 796]

Effective date—2005 c 327 §§ 4-7: See note following RCW 41.37.010.

Chapter 41.40 RCW

WASHINGTON PUBLIC EMPLOYEES' RETIREMENT SYSTEM

Sections

41.40.010	Definitions.
41.40.037	Service by retirees—Reduction of retirement allowance upon reemployment—Reestablishment of membership. (<i>Effective January 1, 2012.</i>)
41.40.183	Annual increase amount—Legislature's rights reserved—No additional increases after June 30, 2011.
41.40.197	Retirement allowance—Annual increases restricted after July 1, 2010—Eligibility.
41.40.1984	Minimum retirement allowance—Annual adjustment—Persons who become beneficiaries after June 30, 1995.
41.40.798	Higher education employees—Option to transfer to plan 3—Limitation on supplemental benefits under RCW 28B.10.400.

41.40.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(5) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(6)(a) "Average final compensation" for plan 1 members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan 2 and plan 3 members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2) or (c) of this subsection.

(c) In calculating average final compensation under this subsection for a member of plan 1, 2, or 3, the department of retirement systems shall include:

(i) Any compensation forgone by the member during the 2009-2011 fiscal biennium as a result of reduced work hours, voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary furloughs if the reduced compensation is an integral part of the

employer's expenditure reduction efforts, as certified by the employer; and

(ii) Any compensation forgone by a member employed by the state or a local government during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer. Reductions to current pay shall not include elimination of previously agreed upon future salary increases.

(7)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(8)(a) "Compensation earnable" for plan 1 members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer.

(i) "Compensation earnable" for plan 1 members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit;

(B) If a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(F) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(ii) "Compensation earnable" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Compensation earnable" for plan 2 and plan 3 members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Compensation earnable" for plan 2 and plan 3 members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(9) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(10) "Director" means the director of the department.

(11) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor, or appointed by the

chief justice of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which compensation is paid.

(12) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(13)(a) "Employer" for plan 1 members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for plan 2 and plan 3 members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August 31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan 2.

(14) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(15) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(16) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(17) "Index B" means the index for the year prior to index A.

(18) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(19) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (11) of this section.

(20) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(21) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.023. RCW 41.26.045 does not prohibit a person otherwise eligible for membership in the retirement system from establishing such membership effective when he or she first entered an eligible position.

(22) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(23) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system for which member and employer contributions, plus interest as required by RCW 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(24) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(25) "Original member" of this retirement system means:

(a) Any person who became a member of the system prior to April 1, 1949;

(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;

(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;

(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;

(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement

allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(26) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(27) "Plan 1" means the public employees' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(28) "Plan 2" means the public employees' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and are not included in plan 3.

(29) "Plan 3" means the public employees' retirement system, plan 3 providing the benefits and funding provisions covering persons who:

(a) First become a member on or after:

(i) March 1, 2002, and are employed by a state agency or institute of higher education and who did not choose to enter plan 2; or

(ii) September 1, 2002, and are employed by other than a state agency or institute of higher education and who did not choose to enter plan 2; or

(b) Transferred to plan 3 under RCW 41.40.795.

(30) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(31) "Regular interest" means such rate as the director may determine.

(32) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(33) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(34) "Retirement allowance" means the sum of the annuity and the pension.

(35) "Retirement system" means the public employees' retirement system provided for in this chapter.

(36) "Separation from service" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.40.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this subsection.

(37)(a) "Service" for plan 1 members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and

one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits. Time spent in standby status, whether compensated or not, is not service.

(i) Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system.

(ii) An individual shall receive no more than a total of twelve service credit months of service during any calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 1 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than twenty-two days equals one-quarter service credit month;

(B) Twenty-two days equals one service credit month;

(C) More than twenty-two days but less than forty-five days equals one and one-quarter service credit month.

(b) "Service" for plan 2 and plan 3 members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the Washington school employees' retirement system, teachers' retirement system, public safety employees' retirement system, or law enforcement officers' and firefighters' retirement system at the time of election or appointment to such position may elect to continue membership in the Washington school employees' retirement system, teachers' retirement system, public safety employees' retirement system, or law enforcement officers' and firefighters' retirement system.

(ii) A member shall receive a total of not more than twelve service credit months of service for such calendar

year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan 2 and plan 3 "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(38) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(39) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(40) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(41) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(42) "State treasurer" means the treasurer of the state of Washington.

(43) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience. [2011 1st sp.s. c 5 § 5. Prior: 2010 2nd sp.s. c 1 § 906; 2009 c 430 § 1; 2007 c 50 § 4; 2004 c 242 § 53; 2003 c 412 § 4; 2000 c 247 § 102; 1998 c 341 § 601; prior: 1997 c 254 § 10; 1997 c 88 § 6; prior: 1995 c 345 § 10; 1995 c 286 § 1; 1995 c 244 § 3; prior: 1994 c 298 § 2; 1994 c 247 § 5; 1994 c 197 § 23; 1994 c 177 § 8; 1993 c 95 § 8; prior: 1991 c 343 § 6; 1991 c 35 § 70; 1990 c 274 § 3; prior: 1989 c 309 § 1; 1989 c 289 § 1; 1985 c 13 § 7; 1983 c 69 § 1; 1981 c 256 § 6; 1979 ex.s. c 249 § 7; 1977 ex.s. c 295 § 16; 1973 1st ex.s. c 190 § 2; 1972 ex.s. c 151 § 1; 1971 ex.s. c 271 § 2; 1969 c 128 § 1; 1965 c 155 § 1; 1963 c 225 § 1; 1963 c 174 § 1; 1961 c 291 § 1; 1957 c 231 § 1; 1955 c 277 § 1; 1953 c 200 § 1; 1951 c 50 § 1; 1949 c 240 § 1; 1947 c 274 § 1; Rem. Supp. 1949 § 11072-1.]

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—1994 c 298: "(1) This act provides cross-references to existing statutes that affect calculation of pensions under the retirement systems authorized by chapters 41.40 and 41.32 RCW to the relevant definition sections of those chapters. Except as provided in subsection (2) of this section,

this act is technical in nature and neither enhances nor diminishes existing pension rights. Except for the amendment to RCW 41.40.010(5), it is not the intent of the legislature to change the substance or effect of any statute previously enacted. Rather, this act provides cross-references to applicable statutes in order to aid with the administration of benefits authorized in chapters 41.40 and 41.32 RCW.

(2) The amendments to RCW 41.40.010 (5) and (29) contained in section 2, chapter 298, Laws of 1994, and to RCW 41.32.010(31) contained in section 3, chapter 298, Laws of 1994, clarify the status of certain persons as either members or retirees. RCW 41.04.275 and section 7, chapter 298, Laws of 1994, create the pension funding account in the state treasury and direct the transfer of moneys deposited in the budget stabilization account by the 1993-95 operating appropriations act, section 919, chapter 24, Laws of 1993 sp. sess., for the continuing costs of state retirement system benefits in effect on July 1, 1993, consistent with section 919, chapter 24, Laws of 1993 sp. sess. to the pension funding account." [1994 c 298 § 1.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Additional notes found at www.leg.wa.gov

41.40.037 Service by retirees—Reduction of retirement allowance upon reemployment—Reestablishment of membership. (Effective January 1, 2012.) (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree from plan 1, plan 2, or plan 3 who enters employment with an employer at least one calendar month after his or her accrual date may continue to receive pension payments while engaged in such service for up to eight hundred sixty-seven hours of service in a calendar year without a reduction of pension. For purposes of this section, employment includes positions covered by annuity and retirement income plans offered by institutions of higher education pursuant to RCW 28B.10.400.

(3) If the retiree opts to reestablish membership under RCW 41.40.023(12), he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at

the time of the member's previous retirement shall be reinstated.

(4) The department shall collect and provide the state actuary with information relevant to the use of this section for the select committee on pension policy.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to be employed for more than five months in a calendar year without a reduction of his or her pension. [2011 1st sp.s. c 47 § 19; 2007 c 50 § 5; 2005 c 319 § 103; 2004 c 242 § 63. Prior: 2003 c 412 § 5; 2003 c 295 § 7; 2001 2nd sp.s. c 10 § 4; (2001 2nd sp.s. c 10 § 12 repealed by 2002 c 26 § 9); 1997 c 254 § 14.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

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

Effective date—2004 c 242: See RCW 41.37.901.

Effective dates—2001 2nd sp.s. c 10: "Except for section 12 of this act which takes effect December 31, 2004, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 2nd sp.s. c 10 § 14.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

41.40.183 Annual increase amount—Legislature's rights reserved—No additional increases after June 30, 2011. (1) Beginning July 1, 2009, the annual increase amount as defined in RCW 41.40.010(4) shall be increased by an amount equal to \$0.40 per month per year of service minus the 2008 gain-sharing increase amount under *RCW 41.31.010 as it exists on July 22, 2007. This adjustment shall not decrease the annual increase amount, and is not to exceed \$0.20 per month per year of service. The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has the contractual right to receive this adjustment to the annual increase amount not granted prior to that time.

(2) The adjustment to the annual increase amount as set forth in section 11, chapter 491, Laws of 2007 was intended by the legislature as a replacement benefit for gain-sharing. If the repeal of **chapter 41.31 RCW is held to be invalid in a final determination of a court of law, and the court orders reinstatement of gain-sharing or other alternate benefits as a remedy, then this adjustment to the annual increase amount shall not be included in future annual increase amounts paid on or after the date of such reinstatement.

(3) No additional increase under this section shall be provided after June 30, 2011. [2011 c 362 § 5; 2007 c 491 § 11.]

Reviser's note: *(1) RCW 41.31.010 was repealed by 2007 c 491 § 13, effective January 2, 2008.

***(2) Chapter 41.31 RCW was repealed by 2007 c 491 § 13, effective January 2, 2008.

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Severability—Conflict with federal requirements—2007 c 491: See notes following RCW 41.32.765.

41.40.197 Retirement allowance—Annual increases restricted after July 1, 2010—Eligibility. (1) Beginning July 1, 1995, and annually thereafter through July 1, 2010,

the retirement allowance of a person meeting the requirements of this section shall be increased by the annual increase amount.

(a) After July 1, 2010, those currently receiving benefits under this section will receive no additional annual increase amounts above the amount in effect on July 1, 2010, except for those who qualify under subsection (2)(b) of this section. This subsection shall not reduce retirement allowances below the amounts in effect on June 30, 2011.

(b) After July 1, 2010, no annual increase amounts may be provided to any beneficiaries who are not already receiving benefits under this section, except for those who qualify under subsection (2)(b) of this section.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary who has received a retirement allowance for at least one year by July 1st in the calendar year in which the annual increase is given and has attained at least age sixty-six by December 31st in the calendar year in which the annual increase is given; or

(b) A beneficiary whose retirement allowance is lower than the minimum benefit provided under RCW 41.40.1984.

(3) If otherwise eligible, those receiving an annual adjustment under RCW 41.40.188(1)(c) shall be eligible for the annual increase adjustment in addition to the benefit that would have been received absent this section.

(4) Those receiving a benefit under RCW 41.40.220(1), or a survivor of a disabled member under RCW 41.44.170(5) shall be eligible for the benefit provided by this section.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time. [2011 c 362 § 6; 2007 c 89 § 1; 2005 c 327 § 8; 1995 c 345 § 5.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2007 c 89: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 89 § 3.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.1984 Minimum retirement allowance—Annual adjustment—Persons who become beneficiaries after June 30, 1995. (1) Except as provided in subsections (4) and (5) of this section, no one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) Where the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a benefit under RCW 41.40.220(1) or under RCW 41.44.170 (3) and (5) shall not be eligible for the benefit provided by this section.

(5) For persons who served as elected officials and whose accumulated employee contributions and credited interest was less than seven hundred fifty dollars at the time of retirement, the minimum benefit under subsection (1) of this section shall be ten dollars per month per each year of creditable service.

(6) Beginning July 1, 2011, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with either (a) at least twenty years of service and who has been retired at least twenty-five years, or (b) at least twenty-five years of service and who has been retired at least twenty years, shall be one thousand five hundred dollars per month. On July 1, 2011, and each year thereafter, the minimum benefit in this subsection shall be increased by three percent, rounded to the nearest cent. [2011 c 362 § 7; 2006 c 244 § 2; 2004 c 85 § 2; 1995 c 345 § 7.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2006 c 244: See note following RCW 41.32.4851.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.798 Higher education employees—Option to transfer to plan 3—Limitation on supplemental benefits under RCW 28B.10.400. (1) All employees who are not qualified under RCW 41.32.836 and who are first employed by an institution of higher education in a position eligible for participation in old age annuities or retirement income plans under RCW 28B.10.400 on or after July 1, 2011, have a period of thirty days to make an irrevocable choice to:

(a) Become a member of the public employees' retirement system plan 3 under this chapter; or

(b) Participate in the annuities or retirement income plan provided by the institution.

(2) At the end of thirty days, if the member has not made a choice to become a member of the public employees' retirement system, he or she becomes a participant in the institution's plan under RCW 28B.10.400, but does not become eligible for any supplemental benefit under RCW 28B.10.400(1)(c). [2011 1st sp.s. c 47 § 18.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Chapter 41.45 RCW

ACTUARIAL FUNDING OF STATE RETIREMENT SYSTEMS

Sections

41.45.150 Unfunded liabilities—Employer contribution rates.

41.45.150 Unfunded liabilities—Employer contribution rates. (1) Beginning July 1, 2009, and ending June 30, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the public employees' retirement system and the public safety employees' retirement system that is used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit

improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
1.25%	1.25%	3.75%	4.50%	5.25%	6.00%

(2) Beginning September 1, 2009, and ending August 31, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the school employees' retirement system that is used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
1.25%	1.25%	3.75%	4.50%	5.25%	6.00%

(3) Beginning September 1, 2009, and ending August 31, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the teachers' retirement system that is used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the teachers' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
2.04%	2.04%	6.50%	7.50%	8.50%	9.50%

(4) Beginning July 1, 2015, a minimum 3.50 percent contribution is established as part of the basic employer contribution rate for the public employees' retirement system and the public safety employees' retirement system, to be used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the public employees' retirement system equals one hundred percent of the actuarial accrued liability.

(5) Beginning September 1, 2015, a minimum 3.50 percent contribution is established as part of the basic employer contribution rate for the school employees' retirement system, to be used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the public employees' retirement system equals one hundred percent of the actuarial accrued liability.

(6) Beginning September 1, 2015, a minimum 5.75 percent contribution is established as part of the basic employer contribution rate for the teachers' retirement system, to be used for the sole purpose of amortizing that portion of the

unfunded actuarial accrued liability in the teachers' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the teachers' retirement system equals one hundred percent of the actuarial accrued liability.

(7) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of the minimum contribution rates and recommend to the council any adjustments as may be needed due to material changes in benefits or actuarial assumptions, methods, or experience. Any changes adopted by the council shall be subject to revision by the legislature. [2011 c 362 § 8; 2010 1st sp.s. c 26 § 7; 2009 c 561 § 5; 2006 c 365 § 2.]

Finding—Intent—Effective date—2011 c 362: See notes following RCW 41.32.483.

Effective date—2009 c 561: See note following RCW 41.45.010.

Effective date—2006 c 365: See note following RCW 41.45.020.

Chapter 41.50 RCW

DEPARTMENT OF RETIREMENT SYSTEMS

Sections

- 41.50.030 Transfer of powers, duties, and functions of certain systems, administrators, and committees to department of retirement systems.
- 41.50.080 Investment of funds of various systems.
- 41.50.110 Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee.

41.50.030 Transfer of powers, duties, and functions of certain systems, administrators, and committees to department of retirement systems. (1) As soon as possible but not more than one hundred and eighty days after March 19, 1976, there is transferred to the department of retirement systems, except as otherwise provided in this chapter, all powers, duties, and functions of:

- (a) The Washington public employees' retirement system;
- (b) The Washington state teachers' retirement system;
- (c) The Washington law enforcement officers' and firefighters' retirement system;
- (d) The Washington state patrol retirement system;
- (e) The Washington judicial retirement system; and
- (f) The state treasurer with respect to the administration of the judges' retirement fund imposed pursuant to chapter 2.12 RCW.

(2) On July 1, 1996, there is transferred to the department all powers, duties, and functions of the deferred compensation committee.

(3) The department shall administer chapter 41.34 RCW.

(4) The department shall administer the Washington school employees' retirement system created under chapter 41.35 RCW.

(5) The department shall administer the Washington public safety employees' retirement system created under chapter 41.37 RCW.

(6) The department shall administer the collection of employer contributions and initial prefunding of the higher education retirement plan supplemental benefits, also referred to as the annuity or retirement income plans created

under chapter 28B.10 RCW. [2011 1st sp.s. c 47 § 20; 2004 c 242 § 42; 1998 c 341 § 501; 1995 c 239 § 316; 1975-'76 2nd ex.s. c 105 § 5.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

41.50.080 Investment of funds of various systems.

The state investment board shall provide for the investment of all funds of the Washington public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the Washington law enforcement officers' and firefighters' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, the Washington public safety employees' retirement system, the higher education retirement plan supplemental benefit fund, and the judges' retirement fund, pursuant to RCW 43.84.150, and may sell or exchange investments acquired in the exercise of that authority. [2011 1st sp.s. c 47 § 21; 2004 c 242 § 45; 1998 c 341 § 504; 1981 c 3 § 34; 1977 ex.s. c 251 § 2; 1975-'76 2nd ex.s. c 105 § 10.]

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2004 c 242: See RCW 41.37.901.

Additional notes found at www.leg.wa.gov

41.50.110 Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee.

(1) Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department, the expenses of administration of the retirement systems, and the expenses of the administration of the office of the state actuary created in chapters 2.10, 2.12, 28B.10, 41.26, 41.32, 41.40, 41.34, 41.35, 41.37, 43.43, and 44.44 RCW shall be paid from the department of retirement systems expense fund.

(2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall ascertain and report to each employer, as defined in RCW 28B.10.400, 41.26.030, 41.32.010, 41.35.010, 41.37.010, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(3) The department shall compute and bill each employer, as defined in RCW 28B.10.400, 41.26.030, 41.32.010, 41.35.010, 41.37.010, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to

each employer shall be made on a percentage rate of salary established by the department. However, the department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(4) The director may adjust the expense fund contribution rate for each system at any time when necessary to reflect unanticipated costs or savings in administering the department.

(5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

(a) Every six months the department shall determine the amount of an employer's fee by reviewing the timeliness and accuracy of the reports submitted by the employer in the preceding six months. If those reports were not both timely and accurate the department may prospectively assess an additional fee under this subsection.

(b) An additional fee assessed by the department under this subsection shall not exceed fifty percent of the standard fee.

(c) The department shall adopt rules implementing this section.

(6) Expenses other than those under *RCW 41.34.060(3) shall be paid pursuant to subsection (1) of this section.

(7) During the 2009-2011 and 2011-2013 fiscal biennia, the legislature may transfer from the department of retirement systems' expense fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2011 1st sp.s. c 50 § 936; 2011 1st sp.s. c 47 § 22; 2009 c 564 § 924; 2008 c 329 § 911; 2005 c 518 § 923; 2004 c 242 § 46; 2003 1st sp.s. c 25 § 914. Prior: 2003 c 295 § 3; 2003 c 294 § 11; 1998 c 341 § 508; 1996 c 39 § 17; 1995 c 239 § 313; 1990 c 8 § 3; 1979 ex.s. c 249 § 8.]

Reviser's note: *(1) RCW 41.34.060 was amended by 2011 c 80 § 2, changing subsection (3) to subsection (4).

(2) This section was amended by 2011 1st sp.s. c 47 § 22 and by 2011 1st sp.s. c 50 § 936, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Intent—Effective dates—2011 1st sp.s. c 47: See notes following RCW 28B.10.400.

Effective date—2009 c 564: See note following RCW 2.68.020.

Severability—Effective date—2008 c 329: See notes following RCW 28B.105.110.

Effective date—2005 c 518 § 923: "Section 923 (RCW 41.50.110) of this act takes effect July 1, 2006." [2005 c 518 § 1806.]

Severability—2005 c 518: See note following RCW 28A.500.030.

Effective date—2004 c 242: See RCW 41.37.901.

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

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Findings—1990 c 8: See note following RCW 41.50.065.

Benefits not contractual right until date specified: RCW 41.34.100.

Additional notes found at www.leg.wa.gov

Chapter 41.56 RCW

PUBLIC EMPLOYEES' COLLECTIVE BARGAINING

Sections

41.56.030	Definitions.
41.56.050	Disagreement in selection of bargaining representative—Disagreement as to merger of bargaining units—Intervention by commission.
41.56.140	Unfair labor practices for public employer enumerated.

41.56.030 Definitions. As used in this chapter:

(1) "Adult family home provider" means a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

(2) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(3) "Child care subsidy" means a payment from the state through a child care subsidy program established pursuant to RCW 74.12.340 or 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor program.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Family child care provider" means a person who:
(a) Provides regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) receives child care subsidies; and (c) is either licensed by the state under RCW 74.15.030 or is exempt from licensing under chapter 74.15 RCW.

(8) "Individual provider" means an individual provider as defined in RCW 74.39A.240(4) who, solely for the purposes of collective bargaining, is a public employee as provided in RCW 74.39A.270.

(9) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(10)(a) "Language access provider" means any independent contractor who provides spoken language interpreter services for department of social and health services appointments or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department.

(b) "Language access provider" does not mean an owner, manager, or employee of a broker or a language access agency.

(11) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multi-member board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multi-member board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(12) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(13) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) firefighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other firefighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer. [2011 1st sp.s. c 21 § 11; 2010 c 296 § 3; 2007 c 184 § 2; 2006 c 54 § 2; 2004 c 3 § 6; 2002 c 99 § 2. Prior: 2000 c 23 § 1; 2000 c 19 § 1; 1999 c 217 § 2; 1995 c 273 § 1;

prior: 1993 c 398 § 1; 1993 c 397 § 1; 1993 c 379 § 302; 1992 c 36 § 2; 1991 c 363 § 119; 1989 c 275 § 2; 1987 c 135 § 2; 1984 c 150 § 1; 1975 1st ex.s. c 296 § 15; 1973 c 131 § 2; 1967 ex.s. c 108 § 3.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Conflict with federal requirements—2010 c 296: See note following RCW 41.56.510.

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

Severability—Effective date—2004 c 3: See notes following RCW 74.39A.270.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

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

Public employment relations commission: Chapter 41.58 RCW.

Additional notes found at www.leg.wa.gov

41.56.050 Disagreement in selection of bargaining representative—Disagreement as to merger of bargaining units—Intervention by commission. (1) In the event that a public employer and public employees are in disagreement as to the selection of a bargaining representative, the commission shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090.

(2) In the event that a public employer and a bargaining representative are in disagreement as to the merger of two or more bargaining units in the employer's workforce that are represented by the same bargaining representative, the commission shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090. [2011 c 222 § 1; 1975 1st ex.s. c 296 § 16; 1967 ex.s. c 108 § 5.]

Additional notes found at www.leg.wa.gov

41.56.140 Unfair labor practices for public employer enumerated. It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

(2) To control, dominate, or interfere with a bargaining representative;

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining with the certified exclusive bargaining representative. [2011 c 222 § 2; 1969 ex.s. c 215 § 1.]

Chapter 41.58 RCW

PUBLIC EMPLOYMENT LABOR RELATIONS

Sections

41.58.050	Rules and regulations.
41.58.060	State ferry system, which chapter governs.
41.58.065	Marine employees' commission—Creation—Members—Rules. (<i>Expires June 30, 2013.</i>)

41.58.050 Rules and regulations. The commission shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the administrative procedure act, chapter 34.05 RCW, such rules and regulations as

may be necessary to carry out the provisions of this chapter. [2011 1st sp.s. c 16 § 17; 1975 1st ex.s. c 296 § 7.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.065.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.065.

41.58.060 State ferry system, which chapter governs.

For any matter concerning the state ferry system and employee relations, collective bargaining, or labor disputes or stoppages, the provisions of this chapter and chapter 47.64 RCW shall govern. However, if a conflict exists between this chapter and chapter 47.64 RCW, this chapter shall govern. [2011 1st sp.s. c 16 § 18; 1983 c 15 § 22.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: See note following RCW 41.58.065.

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: See note following RCW 41.58.065.

Additional notes found at www.leg.wa.gov

41.58.065 Marine employees' commission—Creation—Members—Rules. (Expires June 30, 2013.) (1) There is created the marine employees' commission within the public employment relations commission. The governor shall appoint the marine employees' commission with the consent of the senate. The marine employees' commission shall consist of three members: One member to be appointed from labor; one member from industry; and one member from the public who has significant knowledge of maritime affairs. The public member is chair of the marine employees' commission. Any member of the marine employees' commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Marine employees' commission members are not eligible for state retirement under chapter 41.40 RCW by virtue of their service on the marine employees' commission. Members of the marine employees' commission must be compensated in accordance with RCW 43.03.250 and must receive reimbursement for official travel and other expenses at the same rate and on the same terms as provided for the transportation commission under RCW 47.01.061.

(2) The rules of procedure adopted by the public employment relations commission under RCW 41.58.050 apply to state ferry system employees, except that the marine employees' commission shall act in place of the public employment relations commission only for appeals of unfair labor practice complaints, questions concerning representation, and unit clarifications.

(3) In addition to subsection (2) of this section, the marine employees' commission shall perform the duties as provided in RCW 47.64.280.

(4) This section expires June 30, 2013. [2011 1st sp.s. c 16 § 16.]

Effective date—2011 1st sp.s. c 16 §§ 16-25: "Sections 16 through 25 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2011." [2011 1st sp.s. c 16 § 31.]

Transfer of powers, duties, and functions—2011 1st sp.s. c 16: "(1) Consistent with RCW 41.58.065, the marine employees' commission's powers, duties, and functions are transferred to the public employment relations commission.

(2)(a) All reports, documents, surveys, books, records, files, papers, or

written material in the possession of the marine employees' commission shall be delivered to the custody of the public employment relations commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the marine employees' commission shall be made available to the public employment relations commission. All funds, credits, or other assets held by the marine employees' commission shall be assigned to the public employment relations commission.

(b) Any appropriations made to the marine employees' commission shall, on July 1, 2011, be transferred and credited to the public employment relations commission.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All pending business before the marine employees' commission shall be continued and acted upon by the public employment relations commission. All existing contracts and obligations shall remain in full force and shall be performed by the public employment relations commission.

(4) The transfer of the powers, duties, and functions of the marine employees' commission shall not affect the validity of any act performed before July 1, 2011.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification." [2011 1st sp.s. c 16 § 23.]

Chapter 41.60 RCW

STATE EMPLOYEES' SUGGESTION AWARDS AND INCENTIVE PAY

Sections

41.60.015	Productivity board created—Also known as employee involvement and recognition board—Members—Terms—Compensation.
41.60.050	Appropriations for administrative costs.
41.60.150	Recognition awards.

41.60.015 Productivity board created—Also known as employee involvement and recognition board—Members—Terms—Compensation. (1) There is hereby created the productivity board, which may also be known as the employee involvement and recognition board. The board shall administer the employee suggestion program and the teamwork incentive program under this chapter.

(2) The board shall be composed of:

(a) The secretary of state who shall act as chairperson;

(b) The director of financial management or the director's designee;

(c) The director of enterprise services or the director's designee;

(d) Three persons with experience in administering incentives such as those used by industry, with the lieutenant governor, secretary of state, and speaker of the house of representatives each appointing one person. The secretary of state's appointee shall be a representative of an employee organization certified as an exclusive representative of at least one bargaining unit of classified employees; and

(e) Two persons representing state agencies and institutions with employees subject to chapter 41.06 RCW, and one person representing those subject to *chapter 28B.16 RCW, both appointed by the secretary of state.

Members under subsection (2)(d) and (e) of this section shall be appointed to serve three-year terms.

Members of the board appointed pursuant to subsection (2)(d) of this section may be compensated in accordance with RCW 43.03.240. Any board member who is not a state employee may be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [2011 1st sp.s. c 43 § 443; 2011 1st sp.s. c 21 § 30; 2000 c 139 § 1; 1999 c 50 § 2; 1993 c 467 § 2; 1987 c 387 § 2; 1985 c 114 § 1; 1984 c 287 § 72; 1983 c 54 § 2; 1982 c 167 § 1.]

Reviser's note: *(1) Chapter 28B.16 RCW was repealed by 1993 c 281, with the exception of RCW 28B.16.015 and 28B.16.240, which was recodified as RCW 41.06.382. For exemptions to higher education personnel law see chapter 41.06 RCW. RCW 28B.16.015 and 41.06.382 were subsequently repealed by 2002 c 354 § 403, effective July 1, 2005.

(2) This section was amended by 2011 1st sp.s. c 21 § 30 and by 2011 1st sp.s. c 43 § 443, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

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

Additional notes found at www.leg.wa.gov

41.60.050 Appropriations for administrative costs.

The legislature shall appropriate from the personnel service fund for the payment of administrative costs of the productivity board. However, during the 2011-2013 fiscal biennium, the operations of the productivity board shall be suspended. [2011 1st sp.s. c 50 § 937; 2011 1st sp.s. c 43 § 473; 1991 sp.s. c 16 § 918; 1987 c 387 § 4; 1985 c 114 § 3; 1983 c 54 § 3; 1982 c 167 § 11; 1975-'76 2nd ex.s. c 122 § 3; 1969 ex.s. c 152 § 6; 1965 ex.s. c 142 § 5.]

Reviser's note: This section was amended by 2011 1st sp.s. c 43 § 473 and by 2011 1st sp.s. c 50 § 937, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Department of personnel service fund: RCW 41.06.280.

Additional notes found at www.leg.wa.gov

41.60.150 Recognition awards. Other than suggestion awards and incentive pay unit awards, agencies shall have the authority to recognize employees, either individually or as a class, for accomplishments including outstanding achievements, safety performance, longevity, outstanding public service, or service as employee suggestion evaluators and implementors. Recognition awards may not exceed two hundred dollars in value per award. Such awards may include, but not be limited to, cash or such items as pen and desk sets, plaques, pins, framed certificates, clocks, and calculators. Award costs shall be paid by the agency giving the award. From February 15, 2010, through June 30, 2013, recognition awards may not be given in the form of cash or cash equivalents such as gift certificates or gift cards. [2011 1st sp.s. c 39 § 9; 2010 c 1 § 6; 2000 c 139 § 2; 1999 c 50 § 10; 1989 c 56 § 5; 1985 c 114 § 7.]

Effective date—2011 1st sp.s. c 39: See note following RCW 41.04.820.

Effective date—2010 c 1: See note following RCW 41.06.070.

Additional notes found at www.leg.wa.gov

Chapter 41.68 RCW

REPARATIONS TO STATE EMPLOYEES TERMINATED DURING WORLD WAR II

Sections

41.68.030	Submittal of claim.
41.68.040	Determination of eligibility.
41.68.050	Payment of reparation.

41.68.030 Submittal of claim. A claim under this chapter may be submitted to the department of enterprise services for the reparation of salary losses suffered during the years 1942 through 1947. The claim shall be supported by appropriate verification, such as the person's name at the time of the dismissal, the name of the employing department, and a social security number, or by evidence of official action of termination. The claimant shall also provide an address to which the department shall mail notification of its determination regarding the claimant's eligibility. [2011 1st sp.s. c 43 § 474; 1983 1st ex.s. c 15 § 3.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.68.040 Determination of eligibility. (1) The department of enterprise services shall determine the eligibility of a claimant to receive reparations authorized by this chapter. The department shall then notify the claimant by mail of its determination regarding the claimant's eligibility.

(2) The department may adopt rules that will assist in the fair determination of eligibility and the processing of claims. The department, however, has no obligation to directly notify any person of possible eligibility for reparation of salary losses under this chapter. [2011 1st sp.s. c 43 § 475; 1983 1st ex.s. c 15 § 4.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.68.050 Payment of reparation. A claimant under this chapter who is determined eligible by the department of enterprise services shall receive two thousand five hundred dollars each year for two years. All claims which the department determines are eligible for reparation shall be immediately forwarded to the state treasurer, who shall issue warrants in the appropriate amounts upon demand and verification of identity. If a claimant dies after filing a claim but before receiving full payment, payments shall be made to the claimant's estate upon demand and verification of identity. [2011 1st sp.s. c 43 § 476; 1983 1st ex.s. c 15 § 5.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 41.80 RCW

STATE COLLECTIVE BARGAINING

Sections

41.80.005	Definitions.
41.80.010	Negotiation and ratification of collective bargaining agreements.
41.80.020	Scope of bargaining.

41.80.900	Decodified.
41.80.901	Decodified.
41.80.902	Decodified.
41.80.903	Decodified.
41.80.904	Decodified.
41.80.911	Review of appropriateness of certain collective bargaining units.

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

(1) "Agency" means any agency as defined in RCW 41.06.020 and covered by chapter 41.06 RCW.

(2) "Collective bargaining" means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times and to bargain in good faith in an effort to reach agreement with respect to the subjects of bargaining specified under RCW 41.80.020. The obligation to bargain does not compel either party to agree to a proposal or to make a concession, except as otherwise provided in this chapter.

(3) "Commission" means the public employment relations commission.

(4) "Confidential employee" means an employee who, in the regular course of his or her duties, assists in a confidential capacity persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies, or who assists or aids a manager. "Confidential employee" also includes employees who assist assistant attorneys general who advise and represent managers or confidential employees in personnel or labor relations matters, or who advise or represent the state in tort actions.

(5) "Director" means the director of the public employment relations commission.

(6) "Employee" means any employee, including employees whose work has ceased in connection with the pursuit of lawful activities protected by this chapter, covered by chapter 41.06 RCW, except:

(a) Employees covered for collective bargaining by chapter 41.56 RCW;

(b) Confidential employees;

(c) Members of the Washington management service;

(d) Internal auditors in any agency; or

(e) Any employee of the commission, the office of financial management, or the office of risk management within the department of enterprise services.

(7) "Employee organization" means any organization, union, or association in which employees participate and that exists for the purpose, in whole or in part, of collective bargaining with employers.

(8) "Employer" means the state of Washington.

(9) "Exclusive bargaining representative" means any employee organization that has been certified under this chapter as the representative of the employees in an appropriate bargaining unit.

(10) "Institutions of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(11) "Labor dispute" means any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment with respect to the subjects of bargaining provided in this chapter, regardless of whether the disputants stand in the proximate relation of employer and employee.

(12) "Manager" means "manager" as defined in RCW 41.06.022.

(13) "Supervisor" means an employee who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust employee grievances, or effectively to recommend such action, if the exercise of the authority is not of a merely routine nature but requires the consistent exercise of individual judgment. However, no employee who is a member of the Washington management service may be included in a collective bargaining unit established under this section.

(14) "Unfair labor practice" means any unfair labor practice listed in RCW 41.80.110. [2011 1st sp.s. c 43 § 444; 2002 c 354 § 321.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

41.80.010 Negotiation and ratification of collective bargaining agreements. (1) For the purpose of negotiating collective bargaining agreements under this chapter, the employer shall be represented by the governor or governor's designee, except as provided for institutions of higher education in subsection (4) of this section.

(2)(a) If an exclusive bargaining representative represents more than one bargaining unit, the exclusive bargaining representative shall negotiate with each employer representative as designated in subsection (1) of this section one master collective bargaining agreement on behalf of all the employees in bargaining units that the exclusive bargaining representative represents. For those exclusive bargaining representatives who represent fewer than a total of five hundred employees each, negotiation shall be by a coalition of all those exclusive bargaining representatives. The coalition shall bargain for a master collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of agency-specific issues for inclusion in or as an addendum to the master collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. This section does not prohibit cooperation and coordination of bargaining between two or more exclusive bargaining representatives.

(b) This subsection (2) does not apply to exclusive bargaining representatives who represent employees of institutions of higher education, except when the institution of higher education has elected to exercise its option under subsection (4) of this section to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(c) If five hundred or more employees of an independent state elected official listed in RCW 43.01.010 are organized in a bargaining unit or bargaining units under RCW 41.80.070, the official shall be consulted by the governor or the governor's designee before any agreement is reached under (a) of this subsection concerning supplemental bargaining of agency specific issues affecting the employees in such bargaining unit.

(3) The governor shall submit a request for funds necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of the office of financial management as being feasible financially for the state.

The legislature shall approve or reject the submission of the request for funds as a whole. The legislature shall not consider a request for funds to implement a collective bargaining agreement unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 41.80.090.

(4)(a)(i) For the purpose of negotiating agreements for institutions of higher education, the employer shall be the respective governing board of each of the universities, colleges, or community colleges or a designee chosen by the board to negotiate on its behalf.

(ii) A governing board of a university or college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section, except that:

(A) The governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of a university or college that the representative represents; or

(B) If the parties mutually agree, the governor or the governor's designee and an exclusive bargaining representative shall negotiate one master collective bargaining agreement for all of the bargaining units of employees of more than one university or college that the representative represents.

(iii) A governing board of a community college may elect to have its negotiations conducted by the governor or governor's designee under the procedures provided for general government agencies in subsections (1) through (3) of this section.

(b) Prior to entering into negotiations under this chapter, the institutions of higher education or their designees shall consult with the director of the office of financial manage-

ment regarding financial and budgetary issues that are likely to arise in the impending negotiations.

(c)(i) In the case of bargaining agreements reached between institutions of higher education other than the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and fringe benefit provisions of the bargaining agreements, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in (c)(iii) of this subsection.

(ii) In the case of bargaining agreements reached between the University of Washington and exclusive bargaining representatives agreed to under the provisions of this chapter, if appropriations are necessary to implement the compensation and fringe benefit provisions of a bargaining agreement, the governor shall submit a request for such funds to the legislature according to the provisions of subsection (3) of this section, except as provided in this subsection (4)(c)(ii) and as provided in (c)(iii) of this subsection.

(A) If appropriations of less than ten thousand dollars are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered.

(B) If appropriations of ten thousand dollars or more are necessary to implement the provisions of a bargaining agreement, a request for such funds shall not be submitted to the legislature by the governor unless the request:

(I) Has been submitted to the director of the office of financial management by October 1 prior to the legislative session at which the request is to be considered; and

(II) Has been certified by the director of the office of financial management as being feasible financially for the state.

(C) If the director of the office of financial management does not certify a request under (c)(ii)(B) of this subsection as being feasible financially for the state, the parties shall enter into collective bargaining solely for the purpose of reaching a mutually agreed upon modification of the agreement necessary to address the absence of those requested funds. The legislature may act upon the compensation and fringe benefit provisions of the modified collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(iii) In the case of a bargaining unit of employees of institutions of higher education in which the exclusive bargaining representative is certified during or after the conclusion of a legislative session, the legislature may act upon the compensation and fringe benefit provisions of the unit's initial collective bargaining agreement if those provisions are agreed upon and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(5) There is hereby created a joint committee on employment relations, which consists of two members with leader-

ship positions in the house of representatives, representing each of the two largest caucuses; the chair and ranking minority member of the house appropriations committee, or its successor, representing each of the two largest caucuses; two members with leadership positions in the senate, representing each of the two largest caucuses; and the chair and ranking minority member of the senate ways and means committee, or its successor, representing each of the two largest caucuses. The governor shall periodically consult with the committee regarding appropriations necessary to implement the compensation and fringe benefit provisions in the master collective bargaining agreements, and upon completion of negotiations, advise the committee on the elements of the agreements and on any legislation necessary to implement the agreements.

(6) If, after the compensation and fringe benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

(7) After the expiration date of a collective bargaining agreement negotiated under this chapter, all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(8) For the 2011-2013 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee shall be a separate agreement for which the governor may request funds necessary to implement the agreement. If such an agreement is negotiated and funded by the legislature, this agreement will supersede any terms and conditions of an expired 2009-2011 biennial master collective bargaining agreement under this chapter regarding health care benefits. [2011 1st sp.s. c 50 § 938; 2011 c 344 § 1; 2010 c 104 § 1; 2002 c 354 § 302.]

Reviser's note: This section was amended by 2011 c 344 § 1 and by 2011 1st sp.s. c 50 § 938, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

41.80.020 Scope of bargaining. (1) Except as otherwise provided in this chapter, the matters subject to bargaining include wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement.

(2) The employer is not required to bargain over matters pertaining to:

- (a) Health care benefits or other employee insurance benefits, except as required in subsection (3) of this section;
- (b) Any retirement system or retirement benefit; or
- (c) Rules of the human resources director, the director of enterprise services, or the Washington personnel resources board adopted under RCW 41.06.157.

(3) Matters subject to bargaining include the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits. However, except as provided otherwise in this subsection for institutions of higher education, negotiations regarding the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits shall be conducted between the employer and one coalition of all the exclusive bargaining representatives subject to this chapter. The exclusive bargaining representatives for employees that are subject to chapter 47.64 RCW shall bargain the dollar amount expended on behalf of each employee for health care benefits with the employer as part of the coalition under this subsection. Any such provision agreed to by the employer and the coalition shall be included in all master collective bargaining agreements negotiated by the parties. For institutions of higher education, promotional preferences and the number of names to be certified for vacancies shall be bargained under the provisions of RCW 41.80.010(4). For agreements covering the 2011-2013 fiscal biennium, any agreement between the employer and the coalition regarding the dollar amount expended on behalf of each employee for health care benefits is a separate agreement and shall not be included in the master collective bargaining agreements negotiated by the parties.

(4) The employer and the exclusive bargaining representative shall not agree to any proposal that would prevent the implementation of approved affirmative action plans or that would be inconsistent with the comparable worth agreement that provided the basis for the salary changes implemented beginning with the 1983-1985 biennium to achieve comparable worth.

(5) The employer and the exclusive bargaining representative shall not bargain over matters pertaining to management rights established in RCW 41.80.040.

(6) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

(7) This section does not prohibit bargaining that affects contracts authorized by RCW 41.06.142. [2011 1st sp.s. c 50 § 939; 2011 1st sp.s. c 43 § 445; 2010 c 283 § 16; 2002 c 354 § 303.]

Reviser's note: This section was amended by 2011 1st sp.s. c 43 § 445 and by 2011 1st sp.s. c 50 § 939, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Findings—Intent—Effective date—Management review of ferries division—Assaults on Washington state ferries employees—2010 c 283: See notes following RCW 47.60.355.

41.80.900 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

41.80.901 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

41.80.902 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

41.80.903 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

41.80.904 Decodified. See Supplementary Table of Disposition of Former RCW Sections, this volume.

41.80.911 Review of appropriateness of certain collective bargaining units. (1) By January 1, 2012, the public employment relations commission may review the appropriateness of the collective bargaining units transferred under RCW 43.19.900, 43.19.901, 43.19.902, 43.330.910, and 43.41A.900. The employer or the exclusive bargaining representative may petition the public employment relations commission to review the bargaining units in accordance with this section.

(2) If the commission determines that an existing collective bargaining unit is appropriate pursuant to RCW 41.80.070, the exclusive bargaining representative certified to represent the bargaining unit prior to January 1, 2012, shall continue as the exclusive bargaining representative without the necessity of an election.

(3) If the commission determines that existing collective bargaining units are not appropriate, the commission may modify the units and order an election pursuant to RCW 41.80.080. Certified bargaining representatives will not be required to demonstrate a showing of interest to be included on the ballot.

(4) The commission may require an election pursuant to RCW 41.80.080 if similarly situated employees are represented by more than one employee organization. Certified bargaining representatives will not be required to demonstrate a showing of interest to be included on the ballot. [2011 1st sp.s. c 43 § 1001.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Title 42

PUBLIC OFFICERS AND AGENCIES

Chapters

- 42.12 Vacancies.
- 42.16 Salaries and fees.
- 42.17 Disclosure—Campaign finances—Lobbying.
- 42.17A Campaign disclosure and contribution.
- 42.30 Open public meetings act.
- 42.36 Appearance of fairness doctrine—Limitations.
- 42.44 Notaries public.
- 42.52 Ethics in public service.
- 42.56 Public records act.

Chapter 42.12 RCW VACANCIES

Sections

- 42.12.040 Vacancy in partisan elective office—Successor elected—When.
- 42.12.070 Filling nonpartisan vacancies.

42.12.040 Vacancy in partisan elective office—Successor elected—When. (1) If a vacancy occurs in any partisan elective office in the executive or legislative branches of state government or in any partisan county elective office before the first day of the regular filing period, the position must be open for filing during the regular filing period as provided in RCW 29A.24.171 and a successor shall be elected at the general election. Except during the last year of the term of office, if such a vacancy occurs on or after the first day of the regular filing period, the election of the successor shall occur at the next succeeding general election. The elected successor shall hold office for the remainder of the unexpired term. This section shall not apply to any vacancy occurring in a charter county which has charter provisions inconsistent with this section.

(2) If a vacancy occurs in any legislative office or in any partisan county office after the general election in a year that the position appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified as defined in RCW 29A.04.133 and shall continue through the term for which he or she was elected. [2011 c 349 § 27. Prior: 2006 c 344 § 29; 2005 c 2 § 15 (Initiative Measure No. 872, approved November 2, 2004); 2003 c 238 § 4; 2002 c 108 § 2; 1981 c 180 § 1.]

Reviser's note: The constitutionality of Initiative Measure No. 872 was upheld in *Washington State Grange v. Washington State Republican Party, et al.*, 552 U.S. . . . (2008).

Effective date—2011 c 349 §§ 10-12, 27, 28, and 30: See note following RCW 29A.24.171.

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Short title—Intent—Contingent effective date—2005 c 2 (Initiative Measure No. 872): See notes following RCW 29A.52.112.

Contingent effective date—2003 c 238: See note following RCW 36.16.110.

County office, appointment of acting official: RCW 36.16.115.

Additional notes found at www.leg.wa.gov

42.12.070 Filling nonpartisan vacancies. A vacancy on an elected nonpartisan governing body of a special purpose district where property ownership is not a qualification to vote, a town, or a city other than a first-class city or a charter code city, shall be filled as follows unless the provisions of law relating to the special district, town, or city provide otherwise:

(1) Where one position is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position.

(2) Where two or more positions are vacant and two or more members of the governing body remain in office, the remaining members of the governing body shall appoint a qualified person to fill one of the vacant positions, the remaining members of the governing body and the newly

appointed person shall appoint another qualified person to fill another vacant position, and so on until each of the vacant positions is filled with each of the new appointees participating in each appointment that is made after his or her appointment.

(3) If less than two members of a governing body remain in office, the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person or persons to the governing body until the governing body has two members.

(4) If a governing body fails to appoint a qualified person to fill a vacancy within ninety days of the occurrence of the vacancy, the authority of the governing body to fill the vacancy shall cease and the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person to fill the vacancy.

(5) If the county legislative authority of the county fails to appoint a qualified person within one hundred eighty days of the occurrence of the vacancy, the county legislative authority or the remaining members of the governing body of the city, town, or special district may petition the governor to appoint a qualified person to fill the vacancy. The governor may appoint a qualified person to fill the vacancy after being petitioned if at the time the governor fills the vacancy the county legislative authority has not appointed a qualified person to fill the vacancy.

(6) As provided in chapter 29A.24 RCW, each person who is appointed shall serve until a qualified person is elected at the next election at which a member of the governing body normally would be elected. If needed, special filing periods shall be authorized as provided in chapter 29A.24 RCW for qualified persons to file for the vacant office. A primary shall be held to qualify candidates if sufficient time exists to hold a primary and more than two candidates file for the vacant office. Otherwise, a primary shall not be held and the person receiving the greatest number of votes shall be elected. The person elected shall take office immediately and serve the remainder of the unexpired term.

If an election for the position that became vacant would otherwise have been held at this general election date, only one election to fill the position shall be held and the person elected to fill the succeeding term for that position shall take office immediately when qualified as defined in RCW 29A.04.133 and shall service both the remainder of the unexpired term and the succeeding term. [2011 c 349 § 28; 1994 c 223 § 1.]

Effective date—2011 c 349 §§ 10-12, 27, 28, and 30: See note following RCW 29A.24.171.

Chapter 42.16 RCW SALARIES AND FEES

Sections

42.16.010 Salaries paid twice each month—Policies and procedures to assure full payment—Exceptions.

42.16.010 Salaries paid twice each month—Policies and procedures to assure full payment—Exceptions. (1) Except as provided otherwise in subsections (2) and (3) of

[2011 RCW Supp—page 812]

this section, all state officers and employees shall be paid for services rendered from the first day of the month through the fifteenth day of the month and for services rendered from the sixteenth day of the month through the last calendar day of the month. Paydates for these two pay periods shall be established by the director of financial management through the administrative hearing process and the official paydates shall be established six months prior to the beginning of each subsequent calendar year. Under no circumstance shall the paydate be established more than ten days after the pay period in which the wages are earned except when the designated paydate falls on Sunday, in which case the paydate shall not be later than the following Monday. Payment shall be deemed to have been made by the established paydates if: (a) The salary warrant is available at the geographic work location at which the warrant is normally available to the employee; or (b) the salary has been electronically transferred into the employee's account at the employee's designated financial institution; or (c) the salary warrants are mailed at least two days before the established paydate for those employees engaged in work in remote or varying locations from the geographic location at which the payroll is prepared, provided that the employee has requested payment by mail.

The office of financial management shall develop the necessary policies and operating procedures to assure that all remuneration for services rendered including basic salary, shift differential, standby pay, overtime, penalty pay, salary due based on contractual agreements, and special pay provisions, as provided for by law, agency policy or rule, or contract, shall be available to the employee on the designated paydate. Overtime, penalty pay, and special pay provisions may be paid by the next following paydate if the postponement of payment is attributable to: The employee's not making a timely or accurate report of the facts which are the basis for the payment, or the employer's lack of reasonable opportunity to verify the claim.

Compensable benefits payable because of separation from state service shall be paid with the earnings for the final period worked unless the employee separating has not provided the agency with the proper notification of intent to terminate.

One-half of the employee's basic monthly salary shall be paid in each pay period. Employees paid on an hourly basis or employees who work less than a full pay period shall be paid for actual salary earned.

(2) Subsection (1) of this section shall not apply in instances where it would conflict with contractual rights or, with the approval of the office of financial management, to short-term, intermittent, noncareer state employees, to student employees of institutions of higher education, to national or state guard members participating in state active duty, and to liquor control agency managers who are paid a percentage of monthly liquor sales.

(3) When a national or state guard member is called to participate in state active duty, the paydate shall be no more than seven days following completion of duty or the end of the pay period, whichever is first. When the seventh day falls on Sunday, the paydate shall not be later than the following Monday. This subsection shall apply only to the pay a national or state guard member receives from the military department for state active duty.

(4) Notwithstanding subsections (1) and (2) of this section, a bargained contract at an institution of higher education may include a provision for paying part-time academic employees on a pay schedule that coincides with all the paydays used for full-time academic employees. [2011 1st sp.s. c 43 § 446; 2008 c 186 § 1; 2004 c 56 § 1; 1993 c 281 § 42; 1983 1st ex.s. c 28 § 1; 1979 c 151 § 68; 1969 c 59 § 1; 1967 ex.s. c 25 § 1; 1891 c 130 § 1; RRS § 10965.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Additional notes found at www.leg.wa.gov

Chapter 42.17 RCW

DISCLOSURE—CAMPAIGN FINANCES— LOBBYING

Sections

42.17.2401	"Executive state officer" defined. (<i>Effective until January 1, 2012. Recodified as RCW 42.17A.705.</i>)
42.17.370	Commission—Additional powers. (<i>Effective until January 1, 2012. Recodified as RCW 42.17A.110.</i>)
42.17.460	Access to reports—Legislative intent. (<i>Effective until January 1, 2012. Recodified as RCW 42.17A.060.</i>)
42.17.467	Information technology plan—Consultation. (<i>Effective until January 1, 2012.</i>)
42.17.469	Information technology plan—Submission. (<i>Effective until January 1, 2012.</i>)
42.17.471	Access performance reports. (<i>Effective until January 1, 2012.</i>)

42.17.2401 "Executive state officer" defined. (*Effective until January 1, 2012. Recodified as RCW 42.17A.705.*) For the purposes of RCW 42.17.240, the term "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the administrator of the Washington basic health plan, the director of the department of services for the blind, the chief information officer of the office of chief information officer, the director of the state system of community and technical colleges, the director of commerce, the director of the consolidated technology services agency, the secretary of corrections, the director of early learning, the director of ecology, the commissioner of employment security, the chair of the energy facility site evaluation council, the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of enterprise services, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the human resources director, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the executive director of the public disclosure commission, the executive director of the Puget Sound partnership, the director of the recreation and conservation office, the director of retirement systems, the director of revenue, the secretary of social and health ser-

vices, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, and each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, the boards of trustees of each community college and each technical college, each member of the state board for community and technical colleges, state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, executive ethics board, forest practices appeals board, forest practices board, gambling commission, life sciences discovery fund authority board of trustees, Washington health care facilities authority, each member of the Washington health services commission, higher education coordinating board, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, recreation and conservation funding board, state investment board, commission on judicial conduct, legislative ethics board, liquor control board, lottery commission, marine oversight board, Pacific Northwest electric power and conservation planning council, parks and recreation commission, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearings board, public employees' benefits board, salmon recovery funding board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington state maritime commission, Washington personnel resources board, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and fish and wildlife commission. [2011 1st sp.s. c 43 § 110; 2009 c 565 § 24. Prior: 2007 c 341 § 48; 2007 c 241 § 2; 2007 c 15 § 1; 2006 c 265 § 113; 2005 c 424 § 17; prior: 2001 c 36 § 1; 2001 c 9 § 1; 1996 c 186 § 504; prior: 1995 c 399 § 60; 1995 c 397 § 10; prior: 1993 sp.s. c 2 § 18; 1993 c 492 § 488; 1993 c 281 § 43; 1991 c 200 § 404; 1991 c 3 § 293; prior: 1989 1st ex.s. c 9 § 812; 1989 c 279 § 22; 1989 c 158 § 2; 1988 c 36 § 13; 1987 c 504 § 14; 1985 c 6 § 8; 1984 c 34 § 2.]

Expiration date—2011 1st sp.s. c 43 § 110: "Section 110 of this act expires January 1, 2012." [2011 1st sp.s. c 43 § 112.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

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

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

42.17.370 Commission—Additional powers. (Effective until January 1, 2012. Recodified as RCW 42.17A.110.) The commission is empowered to:

(1) Adopt, promulgate, amend, and rescind suitable administrative rules to carry out the policies and purposes of this chapter, which rules shall be adopted under chapter 34.05 RCW. Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year;

(2) Appoint and set, within the limits established by the office of financial management under RCW 43.03.028, the compensation of an executive director who shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor shall it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations;

(3) Prepare and publish such reports and technical studies as in its judgment will tend to promote the purposes of this chapter, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this chapter;

(4) Make from time to time, on its own motion, audits and field investigations;

(5) Make public the time and date of any formal hearing set to determine whether a violation has occurred, the question or questions to be considered, and the results thereof;

(6) Administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence and require the production of any books, papers, correspondence, memorandums, or other records relevant or material for the purpose of any investigation authorized under this chapter, or any other proceeding under this chapter;

(7) Adopt and promulgate a code of fair campaign practices;

(8) Relieve, by rule, candidates or political committees of obligations to comply with the provisions of this chapter relating to election campaigns, if they have not received contributions nor made expenditures in connection with any election campaign of more than *one thousand dollars;

(9) Adopt rules prescribing reasonable requirements for keeping accounts of and reporting on a quarterly basis costs incurred by state agencies, counties, cities, and other municipalities and political subdivisions in preparing, publishing, and distributing legislative information. The term "legislative information," for the purposes of this subsection, means books, pamphlets, reports, and other materials prepared, published, or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his or her regular examination of

each agency under chapter 43.09 RCW shall review the rules, accounts, and reports and make appropriate findings, comments, and recommendations in his or her examination reports concerning those agencies;

(10) After hearing, by order approved and ratified by a majority of the membership of the commission, suspend or modify any of the reporting requirements of this chapter in a particular case if it finds that literal application of this chapter works a manifestly unreasonable hardship and if it also finds that the suspension or modification will not frustrate the purposes of the chapter. The commission shall find that a manifestly unreasonable hardship exists if reporting the name of an entity required to be reported under **RCW 42.17.241(1)(g)(ii) would be likely to adversely affect the competitive position of any entity in which the person filing the report or any member of his or her immediate family holds any office, directorship, general partnership interest, or an ownership interest of ten percent or more. Any suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall act to suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required under this section. Requests for renewals of reporting modifications may be heard in a brief adjudicative proceeding as set forth in RCW 34.05.482 through 34.05.494 and in accordance with the standards established in this section. No initial request may be heard in a brief adjudicative proceeding and no request for renewal may be heard in a brief adjudicative proceeding if the initial request was granted more than three years previously or if the applicant is holding an office or position of employment different from the office or position held when the initial request was granted. The commission shall adopt administrative rules governing the proceedings. Any citizen has standing to bring an action in Thurston county superior court to contest the propriety of any order entered under this section within one year from the date of the entry of the order;

(11) Revise, at least once every five years but no more often than every two years, the monetary reporting thresholds and reporting code values of this chapter. The revisions shall be only for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the period commencing with the month of December preceding the last revision and concluding with the month of December preceding the month the revision is adopted. As to each of the three general categories of this chapter (reports of campaign finance, reports of lobbyist activity, and reports of the financial affairs of elected and appointed officials), the revisions shall equally affect all thresholds within each category. Revisions shall be adopted as rules under chapter 34.05 RCW. The first revision authorized by this subsection shall reflect economic changes from the time of the last legislative enactment affecting the respective code or threshold through December 1985; and

(12) Develop and provide to filers a system for certification of reports required under this chapter which are transmitted by facsimile or electronically to the commission. Implementation of the program is contingent on the availability of funds. [2011 1st sp.s. c 43 § 447; 2010 1st sp.s. c 7 § 4; 1995 c 397 § 17; 1994 c 40 § 3; 1986 c 155 § 11; 1985 c 367 § 11;

1984 c 34 § 7; 1977 ex.s. c 336 § 7; 1975 1st ex.s. c 294 § 25; 1973 c 1 § 37 (Initiative Measure No. 276, approved November 7, 1972).]

Reviser's note: *(1) The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of subsection (11) of this section. For current dollar amounts, see chapter 390-16 of the Washington Administrative Code (WAC).

** (2) RCW 42.17.241 was recodified as RCW 42.17A.710 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

Expiration date—2011 1st sp.s. c 43 § 447: "Section 447 of this act expires January 1, 2012." [2011 1st sp.s. c 43 § 480.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Findings—Severability—Effective date—1994 c 40: See notes following RCW 42.17.367.

Additional notes found at www.leg.wa.gov

42.17.460 Access to reports—Legislative intent. (Effective until January 1, 2012. Recodified as RCW 42.17A.060.) It is the intent of the legislature to ensure that the commission provide the general public timely access to all contribution and expenditure reports submitted by candidates, continuing political committees, bona fide political parties, lobbyists, and lobbyists' employers. The legislature finds that failure to meet goals for full and timely disclosure threatens to undermine our electoral process.

Furthermore, the legislature intends for the commission to consult with the office of the chief information officer as it seeks to implement chapter 401, Laws of 1999, and that the commission follow the standards and procedures established by the office of the chief information officer in chapter 43.105 RCW as they relate to information technology. [2011 1st sp.s. c 43 § 728; 1999 c 401 § 1.]

Expiration date—2011 1st sp.s. c 43 §§ 728-731: "Sections 728 through 731 of this act expire January 1, 2012." [2011 1st sp.s. c 43 § 1014.]

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

42.17.467 Information technology plan—Consultation. (Effective until January 1, 2012.) In preparing the information technology plan, the commission shall consult with affected state agencies, the office of the chief information officer, and stakeholders in the commission's work, including representatives of political committees, bona fide political parties, news media, and the general public. [2011 1st sp.s. c 43 § 729; 1999 c 401 § 5.]

Expiration date—2011 1st sp.s. c 43 §§ 728-731: See note following RCW 42.17.460.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

42.17.469 Information technology plan—Submission. (Effective until January 1, 2012.) The commission shall submit the information technology plan to the senate and house of representatives fiscal committees, the governor, the senate state and local government committee, the house of representatives state government committee, and the office of the chief information officer by February 1, 2000. It is the intent of the legislature that the commission thereafter comply with the requirements of chapter 43.105 RCW with

respect to preparation and submission of biennial performance reports on the commission's information technology. [2011 1st sp.s. c 43 § 730; 1999 c 401 § 6.]

Expiration date—2011 1st sp.s. c 43 §§ 728-731: See note following RCW 42.17.460.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

42.17.471 Access performance reports. (Effective until January 1, 2012.) The commission shall prepare and submit to the office of the chief information officer a biennial performance report.

The report must include:

(1) An evaluation of the agency's performance relating to information technology;

(2) An assessment of progress made toward implementing the agency information technology plan;

(3) An analysis of the commission's performance measures, set forth in RCW 42.17.463, that relate to the electronic filing of reports and timely public access to those reports via the commission's web site;

(4) A comprehensive description of the methods by which citizens may interact with the agency in order to obtain information and services from the commission; and

(5) An inventory of agency information services, equipment, and proprietary software. [2011 1st sp.s. c 43 § 731; 1999 c 401 § 7.]

Expiration date—2011 1st sp.s. c 43 §§ 728-731: See note following RCW 42.17.460.

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Chapter 42.17A RCW

CAMPAIGN DISCLOSURE AND CONTRIBUTION

Sections

- 42.17A.005 Definitions. *(Effective January 1, 2012.)*
- 42.17A.060 Access to reports—Legislative intent. *(Effective January 1, 2012.)*
- 42.17A.110 Commission—Additional powers *(as amended by 2011 c 60)*. *(Effective January 1, 2012.)*
- 42.17A.110 Commission—Additional powers *(as amended by 2011 1st sp.s. c 43)*. *(Effective January 1, 2012.)*
- 42.17A.125 Changing monetary limits. *(Effective January 1, 2012.)*
- 42.17A.205 Statement of organization by political committees. *(Effective January 1, 2012.)*
- 42.17A.225 Filing and reporting by continuing political committee. *(Effective January 1, 2012.)*
- 42.17A.235 Reporting of contributions and expenditures—Public inspection of accounts. *(Effective January 1, 2012.)*
- 42.17A.245 Electronic filing—When required. *(Effective January 1, 2012.)*
- 42.17A.255 Special reports—Independent expenditures. *(Effective January 1, 2012.)*
- 42.17A.415 Contributions. *(Effective January 1, 2012.)*
- 42.17A.442 Contributions by political committees to political committees. *(Effective January 1, 2012.)*
- 42.17A.705 "Executive state officer" defined. *(Effective January 1, 2012.)*
- 42.17A.750 Civil remedies and sanctions—Referral for criminal prosecution. *(Effective January 1, 2012.)*
- 42.17A.755 Violations—Determination by commission—Penalties—Procedure. *(Effective January 1, 2012.)*
- 42.17A.770 Limitation on actions. *(Effective January 1, 2012.)*
- 42.17A.919 Effective date—2011 c 60.

42.17A.005 Definitions. (Effective January 1, 2012.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Agency" includes all state agencies and all local agencies. "State agency" includes every state office, department, division, bureau, board, commission, or other state agency. "Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

(3) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

(4) "Ballot proposition" means any "measure" as defined by RCW 29A.04.091, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency before its circulation for signatures.

(5) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(6) "Bona fide political party" means:

(a) An organization that has been recognized as a minor political party by the secretary of state;

(b) The governing body of the state organization of a major political party, as defined in RCW 29A.04.086, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

(7) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

(a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(8) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

(9) "Commercial advertiser" means any person who sells the service of communicating messages or producing printed material for broadcast or distribution to the general public or segments of the general public whether through the use of newspapers, magazines, television and radio stations, billboard companies, direct mail advertising companies, printing companies, or otherwise.

(10) "Commission" means the agency established under RCW 42.17A.100.

(11) "Compensation" unless the context requires a narrower meaning, includes payment in any form for real or personal property or services of any kind. For the purpose of compliance with RCW 42.17A.710, "compensation" does not include per diem allowances or other payments made by a governmental entity to reimburse a public official for expenses incurred while the official is engaged in the official business of the governmental entity.

(12) "Continuing political committee" means a political committee that is an organization of continuing existence not established in anticipation of any particular election campaign.

(13)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Standard interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this subsection, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws; or

(ix) The performance of ministerial functions by a person on behalf of two or more candidates or political committees either as volunteer services defined in (b)(vi) of this subsection or for payment by the candidate or political committee for whom the services are performed as long as:

(A) The person performs solely ministerial functions;

(B) A person who is paid by two or more candidates or political committees is identified by the candidates and political committees on whose behalf services are performed as part of their respective statements of organization under RCW 42.17A.205; and

(C) The person does not disclose, except as required by law, any information regarding a candidate's or committee's plans, projects, activities, or needs, or regarding a candidate's or committee's contributions or expenditures that is not already publicly available from campaign reports filed with the commission, or otherwise engage in activity that constitutes a contribution under (a)(ii) of this subsection.

A person who performs ministerial functions under this subsection (13)(b)(ix) is not considered an agent of the candidate or committee as long as he or she has no authority to authorize expenditures or make decisions on behalf of the candidate or committee.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

(14) "Depository" means a bank, mutual savings bank, savings and loan association, or credit union doing business in this state.

(15) "Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

(16) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters. An election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

(17) "Election campaign" means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition.

(18) "Election cycle" means the period beginning on the first day of January after the date of the last previous general election for the office that the candidate seeks and ending on December 31st after the next election for the office. In the case of a special election to fill a vacancy in an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on December 31st after the special election.

(19)(a) "Electioneering communication" means any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that:

(i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(ii) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

(b) "Electioneering communication" does not include:

(i) Usual and customary advertising of a business owned by a candidate, even if the candidate is mentioned in the advertising when the candidate has been regularly mentioned in that advertising appearing at least twelve months preceding his or her becoming a candidate;

(ii) Advertising for candidate debates or forums when the advertising is paid for by or on behalf of the debate or forum sponsor, so long as two or more candidates for the same position have been invited to participate in the debate or forum;

(iii) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is:

(A) Of primary interest to the general public;

(B) In a news medium controlled by a person whose business is that news medium; and

(C) Not a medium controlled by a candidate or a political committee;

(iv) Slate cards and sample ballots;

(v) Advertising for books, films, dissertations, or similar works (A) written by a candidate when the candidate entered into a contract for such publications or media at least twelve months before becoming a candidate, or (B) written about a candidate;

(vi) Public service announcements;

(vii) A mailed internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(viii) An expenditure by or contribution to the authorized committee of a candidate for state, local, or judicial office; or

(ix) Any other communication exempted by the commission through rule consistent with the intent of this chapter.

(20) "Expenditure" includes a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. "Expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. "Expenditure" shall not include the partial or complete repayment by a candidate or political committee of the principal of a loan, the receipt of which loan has been properly reported.

(21) "Final report" means the report described as a final report in RCW 42.17A.235(2).

(22) "General election" for the purposes of RCW 42.17A.405 means the election that results in the election of a person to a state or local office. It does not include a primary.

(23) "Gift" has the definition in RCW 42.52.010.

(24) "Immediate family" includes the spouse or domestic partner, dependent children, and other dependent relatives, if living in the household. For the purposes of the definition of "intermediary" in this section, "immediate family" means an individual's spouse or domestic partner, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse or the domestic partner of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse or domestic partner and the spouse or the domestic partner of any such person.

(25) "Incumbent" means a person who is in present possession of an elected office.

(26) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of *eight hundred dollars or more. A series of expenditures, each of

which is under eight hundred dollars, constitutes one independent expenditure if their cumulative value is eight hundred dollars or more.

(27)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

(28) "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor.

(29) "Legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

(30) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state administrative procedure act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

(31) "Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

(32) "Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

(33) "Ministerial functions" means an act or duty carried out as part of the duties of an administrative office without exercise of personal judgment or discretion.

(34) "Participate" means that, with respect to a particular election, an entity:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure or electioneering communication in support of or opposition to a candidate;

(c) Endorses a candidate before contributions are made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed before a contribution is made by a subsidiary corporation or local unit with respect to that candidate or that candidate's opponent; or

(e) Directly or indirectly collaborates or consults with a subsidiary corporation or local unit on matters relating to the support of or opposition to a candidate, including, but not limited to, the amount of a contribution, when a contribution

should be given, and what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

(35) "Person" includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(36) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(37) "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(38) "Primary" for the purposes of RCW 42.17A.405 means the procedure for nominating a candidate to state or local office under chapter 29A.52 RCW or any other primary for an election that uses, in large measure, the procedures established in chapter 29A.52 RCW.

(39) "Public office" means any federal, state, judicial, county, city, town, school district, port district, special district, or other state political subdivision elective office.

(40) "Public record" has the definition in RCW 42.56.010.

(41) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29A.56.120 and ending thirty days after the recall election.

(42)(a) "Sponsor" for purposes of an electioneering communications, independent expenditures, or political advertising means the person paying for the electioneering communication, independent expenditure, or political advertising. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(b) "Sponsor," for purposes of a political committee, means any person, except an authorized committee, to whom any of the following applies:

(i) The committee receives eighty percent or more of its contributions either from the person or from the person's members, officers, employees, or shareholders;

(ii) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

(43) "Sponsored committee" means a committee, other than an authorized committee, that has one or more sponsors.

(44) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(45) "State official" means a person who holds a state office.

(46) "Surplus funds" mean, in the case of a political committee or candidate, the balance of contributions that remain

in the possession or control of that committee or candidate subsequent to the election for which the contributions were received, and that are in excess of the amount necessary to pay remaining debts incurred by the committee or candidate with respect to that election. In the case of a continuing political committee, "surplus funds" mean those contributions remaining in the possession or control of the committee that are in excess of the amount necessary to pay all remaining debts when it makes its final report under RCW 42.17A.255.

(47) "Treasurer" and "deputy treasurer" mean the individuals appointed by a candidate or political committee, pursuant to RCW 42.17A.210, to perform the duties specified in that section. [2011 c 145 § 2; 2011 c 60 § 19. Prior: 2010 c 204 § 101; 2008 c 6 § 201; prior: 2007 c 358 § 1; 2007 c 180 § 1; 2005 c 445 § 6; 2002 c 75 § 1; 1995 c 397 § 1; 1992 c 139 § 1; 1991 sp.s. c 18 § 1; 1990 c 139 § 2; prior: 1989 c 280 § 1; 1989 c 175 § 89; 1984 c 34 § 5; 1979 ex.s. c 50 § 1; 1977 ex.s. c 313 § 1; 1975 1st ex.s. c 294 § 2; 1973 c 1 § 2 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.020.]

Reviser's note: *(1) The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17A.125. For current dollar amounts, see chapter 390-05 of the Washington Administrative Code (WAC).

(2) This section was amended by 2011 c 60 § 19 and by 2011 c 145 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2011 c 145: "The legislature finds that timely and full disclosure of election campaign funding and expenditures is essential to a well-functioning democracy in which Washington's voters can judge for themselves what is appropriate based on ideologies, programs, and policies. Long-term voter engagement and confidence depends on the public knowing who is funding the multiple and targeted messages distributed during election campaigns.

The legislature also finds that recent events have revealed the need for refining certain elements of our state's election campaign finance laws that have proven inadequate in preventing efforts to hide information from voters. The legislature intends, therefore, to promote greater transparency for the public by enhancing penalties for violations; regulating the formation of, and contributions between, political committees; and reducing the expenditure thresholds for purposes of mandatory electronic filing and disclosure." [2011 c 145 § 1.]

Effective date—2011 c 145: "This act takes effect January 1, 2012." [2011 c 145 § 8.]

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

Effective date—2007 c 358: "This act takes effect January 1, 2008." [2007 c 358 § 4.]

Legislative intent—1990 c 139: "The provisions of this act which repeal the reporting requirements established by chapter 423, Laws of 1987 for registered lobbyists and employers of lobbyists are not intended to alter, expand, or restrict whatsoever the definition of "lobby" or "lobbying" contained in RCW 42.17.020 as it existed prior to the enactment of chapter 423, Laws of 1987." [1990 c 139 § 1.]

Additional notes found at www.leg.wa.gov

42.17A.060 Access to reports—Legislative intent. (Effective January 1, 2012.) It is the intent of the legislature to ensure that the commission provide the general public timely access to all contribution and expenditure reports submitted by candidates, continuing political committees, bona fide political parties, lobbyists, and lobbyists' employers. The legislature finds that failure to meet goals for full and timely disclosure threatens to undermine our electoral process.

Furthermore, the legislature intends for the commission to consult with the office of the chief information officer as it seeks to implement chapter 401, Laws of 1999, and that the commission follow the standards and procedures established by the office of the chief information officer in chapter 43.105 RCW as they relate to information technology. [2011 1st sp.s. c 43 § 732; 1999 c 401 § 1. Formerly RCW 42.17.460.]

Effective date—2011 1st sp.s. c 43 § 732: "Section 732 of this act takes effect January 1, 2012." [2011 1st sp.s. c 43 § 1015.]

Purpose—2011 1st sp.s. c 43: See note following RCW 43.19.003.

42.17A.110 Commission—Additional powers (as amended by 2011 c 60). (Effective January 1, 2012.) The commission may:

(1) Adopt, amend, and rescind suitable administrative rules to carry out the policies and purposes of this chapter, which rules shall be adopted under chapter 34.05 RCW. Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year;

(2) Appoint an executive director and set, within the limits established by the *department of personnel under RCW 43.03.028, the executive director's compensation. The executive director shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor may it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations;

(3) Prepare and publish reports and technical studies as in its judgment will tend to promote the purposes of this chapter, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this chapter;

(4) Conduct, as it deems appropriate, audits and field investigations;

(5) Make public the time and date of any formal hearing set to determine whether a violation has occurred, the question or questions to be considered, and the results thereof;

(6) Administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence, and require the production of any records relevant to any investigation authorized under this chapter, or any other proceeding under this chapter;

(7) Adopt a code of fair campaign practices;

(8) Adopt rules relieving candidates or political committees of obligations to comply with the election campaign provisions of this chapter, if they have not received contributions nor made expenditures in connection with any election campaign of more than **five thousand dollars;

(9) Adopt rules prescribing reasonable requirements for keeping accounts of, and reporting on a quarterly basis, costs incurred by state agencies, counties, cities, and other municipalities and political subdivisions in preparing, publishing, and distributing legislative information. For the purposes of this subsection, "legislative information" means books, pamphlets, reports, and other materials prepared, published, or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his or her regular examination of each agency under chapter 43.09 RCW shall review the rules, accounts, and reports and make appropriate findings, comments, and recommendations concerning those agencies; and

(10) Develop and provide to filers a system for certification of reports required under this chapter which are transmitted by facsimile or electronically to the commission. Implementation of the program is contingent on the availability of funds. [2011 c 60 § 20. Prior: 2010 1st sp.s. c 7 § 4; 2010 c 204 § 303; 1995 c 397 § 17; 1994 c 40 § 3; 1986 c 155 § 11; 1985 c 367 § 11; 1984 c 34 § 7; 1977 ex.s. c 336 § 7; 1975 1st ex.s. c 294 § 25; 1973 c 1 § 37 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.370.]

Reviser's note: *(1) The office of financial management has responsibility under RCW 43.03.028, in accordance with section 451, chapter 43, Laws of 2011 1st sp.s.

** (2) The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of this section. For current dollar amounts, see chapter 390-16 of the Washington Administrative Code (WAC).

42.17A.110 Commission—Additional powers (as amended by 2011 1st sp.s. c 43). (Effective January 1, 2012.) The commission is empowered to:

(1) Adopt, promulgate, amend, and rescind suitable administrative rules to carry out the policies and purposes of this chapter, which rules shall be adopted under chapter 34.05 RCW. Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year;

(2) Appoint and set, within the limits established by the office of financial management under RCW 43.03.028, the compensation of an executive director who shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor shall it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations;

(3) Prepare and publish such reports and technical studies as in its judgment will tend to promote the purposes of this chapter, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this chapter;

(4) Make from time to time, on its own motion, audits and field investigations;

(5) Make public the time and date of any formal hearing set to determine whether a violation has occurred, the question or questions to be considered, and the results thereof;

(6) Administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence and require the production of any books, papers, correspondence, memorandums, or other records relevant or material for the purpose of any investigation authorized under this chapter, or any other proceeding under this chapter;

(7) Adopt and promulgate a code of fair campaign practices;

(8) Relieve, by rule, candidates or political committees of obligations to comply with the provisions of this chapter relating to election campaigns, if they have not received contributions nor made expenditures in connection with any election campaign of more than *one thousand dollars;

(9) Adopt rules prescribing reasonable requirements for keeping accounts of and reporting on a quarterly basis costs incurred by state agencies, counties, cities, and other municipalities and political subdivisions in preparing, publishing, and distributing legislative information. The term "legislative information," for the purposes of this subsection, means books, pamphlets, reports, and other materials prepared, published, or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his or her regular examination of each agency under chapter 43.09 RCW shall review the rules, accounts, and reports and make appropriate findings, comments, and recommendations in his or her examination reports concerning those agencies;

(10) After hearing, by order approved and ratified by a majority of the membership of the commission, suspend or modify any of the reporting requirements of this chapter in a particular case if it finds that literal application of this chapter works a manifestly unreasonable hardship and if it also finds that the suspension or modification will not frustrate the purposes of the chapter. The commission shall find that a manifestly unreasonable hardship exists if reporting the name of an entity required to be reported under **RCW 42.17.241(1)(g)(ii) would be likely to adversely affect the competitive position of any entity in which the person filing the report or any member of his or her immediate family holds any office, directorship, general partnership interest, or an ownership interest of ten percent or more. Any suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall act to suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required under this section. Requests for renewals of reporting modifications may be heard in a brief adjudicative proceeding as set forth in RCW 34.05.482 through 34.05.494 and in accordance with the standards established in this section. No initial request may be heard in a brief adjudicative proceeding and no request for renewal may be heard in a brief adjudicative proceeding if the initial request was granted more than three years previously or if the applicant is holding an office or position of employment different from the office or position held when the initial request was granted. The commission shall adopt administrative rules governing the proceedings. Any citizen has standing to bring an action in Thurston county superior court to contest the propriety of any order entered under this section within one year from the date of the entry of the order; and

(11) Revise, at least once every five years but no more often than every two years, the monetary reporting thresholds and reporting code values of this chapter. The revisions shall be only for the purpose of recognizing eco-

conomic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the period commencing with the month of December preceding the last revision and concluding with the month of December preceding the month the revision is adopted. As to each of the three general categories of this chapter (reports of campaign finance, reports of lobbyist activity, and reports of the financial affairs of elected and appointed officials), the revisions shall equally affect all thresholds within each category. Revisions shall be adopted as rules under chapter 34.05 RCW. The first revision authorized by this subsection shall reflect economic changes from the time of the last legislative enactment affecting the respective code or threshold through December 1985;

(12) Develop and provide to filers a system for certification of reports required under this chapter which are transmitted by facsimile or electronically to the commission. Implementation of the program is contingent on the availability of funds. [2011 1st sp.s. c 43 § 448. Prior: 2010 1st sp.s. c 7 § 4; 2010 c 204 § 303; 1995 c 397 § 17; 1994 c 40 § 3; 1986 c 155 § 11; 1985 c 367 § 11; 1984 c 34 § 7; 1977 ex.s. c 336 § 7; 1975 1st ex.s. c 294 § 25; 1973 c 1 § 37 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.370.]

Reviser's note: *(1) The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of subsection (11) of this section. For current dollar amounts, see chapter 390-16 of the Washington Administrative Code (WAC).

** (2) RCW 42.17.241 was recodified as RCW 42.17A.710 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

(3) RCW 42.17A.110 was reenacted and also reenacted and amended during the 2011 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2011 1st sp.s. c 43 § 448: "Section 448 of this act takes effect January 1, 2012." [2011 1st sp.s. c 43 § 481.]

Purpose—2011 1st sp.s. c 43: See note following RCW 43.19.003.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Findings—Severability—Effective date—1994 c 40: See notes following RCW 42.17A.050.

Additional notes found at www.leg.wa.gov

42.17A.125 Changing monetary limits. (Effective January 1, 2012.) (1) At the beginning of each even-numbered calendar year, the commission shall increase or decrease the dollar amounts in RCW 42.17A.005(26), 42.17A.405, 42.17A.410, 42.17A.445(3), 42.17A.475, and 42.17A.630(1) based on changes in economic conditions as reflected in the inflationary index recommended by the office of financial management. The new dollar amounts established by the commission under this section shall be rounded off to amounts as judged most convenient for public understanding and so as to be within ten percent of the target amount equal to the base amount provided in this chapter multiplied by the increase in the inflationary index since July 2008.

(2) The commission may revise, at least once every five years but no more often than every two years, the monetary reporting thresholds and reporting code values of this chapter. The revisions shall be only for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the period commencing with the month of December preceding the last revision and concluding with the month of December preceding the month the revision is adopted. As to each of the three general categories of this chapter, reports of campaign finance, reports of lobbyist activity, and reports of the financial affairs of elected and appointed officials, the revisions shall equally affect all thresholds within each category.

The revisions authorized by this subsection shall reflect economic changes from the time of the last legislative enactment affecting the respective code or threshold.

(3) Revisions made in accordance with subsections (1) and (2) of this section shall be adopted as rules under chapter 34.05 RCW. [2011 c 60 § 21; 2010 c 204 § 305; 1993 c 2 § 9 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.690.]

42.17A.205 Statement of organization by political committees. (Effective January 1, 2012.)

(1) Every political committee shall file a statement of organization with the commission. The statement must be filed within two weeks after organization or within two weeks after the date the committee first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier. A political committee organized within the last three weeks before an election and having the expectation of receiving contributions or making expenditures during and for that election campaign shall file a statement of organization within three business days after its organization or when it first has the expectation of receiving contributions or making expenditures in the election campaign.

(2) The statement of organization shall include but not be limited to:

- (a) The name and address of the committee;
- (b) The names and addresses of all related or affiliated committees or other persons, and the nature of the relationship or affiliation;
- (c) The names, addresses, and titles of its officers; or if it has no officers, the names, addresses, and titles of its responsible leaders;
- (d) The name and address of its treasurer and depository;
- (e) A statement whether the committee is a continuing one;
- (f) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and, if the committee is supporting the entire ticket of any party, the name of the party;
- (g) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition;
- (h) What distribution of surplus funds will be made, in accordance with RCW 42.17A.430, in the event of dissolution;
- (i) The street address of the place and the hours during which the committee will make available for public inspection its books of account and all reports filed in accordance with RCW 42.17A.235;
- (j) Such other information as the commission may by regulation prescribe, in keeping with the policies and purposes of this chapter;
- (k) The name, address, and title of any person who authorizes expenditures or makes decisions on behalf of the candidate or committee; and
- (l) The name, address, and title of any person who is paid by or is a volunteer for a candidate or political committee to perform ministerial functions and who performs ministerial functions on behalf of two or more candidates or committees.

(3) No two political committees may have the same name.

(4) Any material change in information previously submitted in a statement of organization shall be reported to the commission within the ten days following the change.

(5) As used in this section, the "name" of a sponsored committee must include the name of the person that is the sponsor of the committee. If more than one person meets the definition of sponsor, the name of the committee must include the name of at least one sponsor, but may include the names of other sponsors. A person may sponsor only one political committee for the same elected office or same ballot measure per election cycle. [2011 c 145 § 3. Prior: 2010 c 205 § 1; 2010 c 204 § 402; 2007 c 358 § 2; 1989 c 280 § 2; 1982 c 147 § 1; 1977 ex.s. c 336 § 1; 1975 1st ex.s. c 294 § 3; 1973 c 1 § 4 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.040.]

Findings—Intent—Effective date—2011 c 145: See notes following RCW 42.17A.005.

Effective date—2007 c 358: See note following RCW 42.17A.005.

Additional notes found at www.leg.wa.gov

42.17A.225 Filing and reporting by continuing political committee. (Effective January 1, 2012.) (1) In addition to the provisions of this section, a continuing political committee shall file and report on the same conditions and at the same times as any other committee in accordance with the provisions of RCW 42.17A.205, 42.17A.210, and 42.17A.220.

(2) A continuing political committee shall file with the commission a report on the tenth day of each month detailing expenditures made and contributions received for the preceding calendar month. This report need only be filed if either the total contributions received or total expenditures made since the last such report exceed two hundred dollars. The report shall be on a form supplied by the commission and shall include the following information:

(a) The information required by RCW 42.17A.240;

(b) Each expenditure made to retire previously accumulated debts of the committee identified by recipient, amount, and date of payments;

(c) Other information the commission shall prescribe by rule.

(3) If a continuing political committee makes a contribution in support of or in opposition to a candidate or ballot proposition within sixty days before the date that the candidate or ballot proposition will be voted upon, the committee shall report pursuant to RCW 42.17A.235.

(4) A continuing political committee shall file reports as required by this chapter until it is dissolved, at which time a final report shall be filed. Upon submitting a final report, the duties of the treasurer shall cease and there shall be no obligation to make any further reports.

(5) The treasurer shall maintain books of account, current within five business days, that accurately reflect all contributions and expenditures. During the eight days immediately preceding the date of any election that the committee has received any contributions or made any expenditures, the books of account shall be kept current within one business day and shall be open for public inspection in the same manner as provided for candidates and other political committees in RCW 42.17A.235(4).

(6) All reports filed pursuant to this section shall be certified as correct by the treasurer.

(7) The treasurer shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred. [2011 c 60 § 22. Prior: 2010 c 205 § 4; 2010 c 204 § 406; 2000 c 237 § 1; 1989 c 280 § 5; 1982 c 147 § 4; 1975 1st ex.s. c 294 § 5. Formerly RCW 42.17.065.]

Additional notes found at www.leg.wa.gov

42.17A.235 Reporting of contributions and expenditures—Public inspection of accounts. (Effective January 1, 2012.) (1) In addition to the information required under RCW 42.17A.205 and 42.17A.210, on the day the treasurer is designated, each candidate or political committee must file with the commission a report of all contributions received and expenditures made prior to that date, if any.

(2) Each treasurer shall file with the commission a report containing the information required by RCW 42.17A.240 at the following intervals:

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held;

(b) On the tenth day of the first month after the election; and

(c) On the tenth day of each month in which no other reports are required to be filed under this section only if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

(3) For the period beginning the first day of the fourth month preceding the date of the special election, or for the period beginning the first day of the fifth month before the date of the general election, and ending on the date of that special or general election, each Monday the treasurer shall file with the commission a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds and the amount contributed by each person. However, persons who contribute no more than twenty-five dollars in the aggregate are not required to be identified in the report. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by a deputy treasurer, the copy shall be forwarded to the treasurer for his or her records. Each report shall be certified as correct by the treasurer or deputy treasurer making the deposit.

(4) The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or

expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day. As specified in the committee's statement of organization filed under RCW 42.17A.205, the books of account must be open for public inspection by appointment at the designated place for inspections between 8:00 a.m. and 8:00 p.m. on any day from the eighth day immediately before the election through the day immediately before the election, other than Saturday, Sunday, or a legal holiday. It is a violation of this chapter for a candidate or political committee to refuse to allow and keep an appointment for an inspection to be conducted during these authorized times and days. The appointment must be allowed at an authorized time and day for such inspections that is within twenty-four hours of the time and day that is requested for the inspection.

(5) Copies of all reports filed pursuant to this section shall be readily available for public inspection by appointment, pursuant to subsection (4) of this section, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission.

(6) The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

(7) All reports filed pursuant to subsection (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

(8) When there is no outstanding debt or obligation, the campaign fund is closed, and the campaign is concluded in all respects or in the case of a political committee, the committee has ceased to function and has dissolved, the treasurer shall file a final report. Upon submitting a final report, the duties of the treasurer shall cease and there is no obligation to make any further reports. [2011 c 60 § 23. Prior: 2010 c 205 § 6; 2010 c 204 § 408; 2008 c 73 § 1; 2006 c 344 § 30; 2005 c 184 § 1; 2002 c 75 § 2; 2000 c 237 § 2; 1999 c 401 § 13; 1995 c 397 § 2; 1989 c 280 § 8; 1986 c 28 § 1; 1982 c 147 § 6; 1975 1st ex.s. c 294 § 6; 1973 c 1 § 8 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.080.]

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

Additional notes found at www.leg.wa.gov

42.17A.245 Electronic filing—When required. (*Effective January 1, 2012.*) (1) Each candidate or political committee that expended five thousand dollars or more in the preceding year or expects to expend five thousand dollars or more in the current year shall file all contribution reports and expenditure reports required by this chapter by the electronic alternative provided by the commission under RCW 42.17A.055. The commission may make exceptions on a case-by-case basis for candidates whose authorized committees lack the technological ability to file reports using the electronic alternative provided by the commission.

(2) Failure by a candidate or political committee to comply with this section is a violation of this chapter. [2011 c 145 § 4; 2010 c 204 § 410; 2000 c 237 § 4; 1999 c 401 § 12. Formerly RCW 42.17.3691.]

Findings—Intent—Effective date—2011 c 145: See notes following RCW 42.17A.005.

42.17A.255 Special reports—Independent expenditures. (*Effective January 1, 2012.*) (1) For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240. "Independent expenditure" does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.

(2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

(3) At the following intervals each person who is required to file an initial report pursuant to subsection (2) of this section shall file with the commission a further report of the independent expenditures made since the date of the last report:

(a) On the twenty-first day and the seventh day preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election; and

(c) On the tenth day of each month in which no other reports are required to be filed pursuant to this section. However, the further reports required by this subsection (3) shall only be filed if the reporting person has made an independent expenditure since the date of the last previous report filed.

The report filed pursuant to paragraph (a) of this subsection (3) shall be the final report, and upon submitting such final report the duties of the reporting person shall cease, and there shall be no obligation to make any further reports.

(4) All reports filed pursuant to this section shall be certified as correct by the reporting person.

(5) Each report required by subsections (2) and (3) of this section shall disclose for the period beginning at the end of the period for the last previous report filed or, in the case of an initial report, beginning at the time of the first independent expenditure, and ending not more than one business day before the date the report is due:

(a) The name and address of the person filing the report;

(b) The name and address of each person to whom an independent expenditure was made in the aggregate amount

of more than fifty dollars, and the amount, date, and purpose of each such expenditure. If no reasonable estimate of the monetary value of a particular independent expenditure is practicable, it is sufficient to report instead a precise description of services, property, or rights furnished through the expenditure and where appropriate to attach a copy of the item produced or distributed by the expenditure;

(c) The total sum of all independent expenditures made during the campaign to date; and

(d) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter. [2011 c 60 § 24; 2010 c 205 § 7; 1995 c 397 § 28; 1989 c 280 § 10; 1985 c 367 § 6; 1982 c 147 § 9; 1975-'76 2nd ex.s. c 112 § 4; 1973 c 1 § 10 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.100.]

Additional notes found at www.leg.wa.gov

42.17A.415 Contributions. (*Effective January 1, 2012.*) (1) Contributions to candidates for state office made and received before December 3, 1992, are considered to be contributions under *RCW 42.17.640 through 42.17.790. Monetary contributions that exceed the contribution limitations and that have not been spent by the recipient of the contribution by December 3, 1992, must be disposed of in accordance with RCW 42.17A.430.

(2) Contributions to other candidates subject to the contribution limits of this chapter made and received before June 7, 2006, are considered to be contributions under *RCW 42.17.640 through 42.17.790. Contributions that exceed the contribution limitations and that have not been spent by the recipient of the contribution by June 7, 2006, must be disposed of in accordance with RCW 42.17A.430 except for subsections (6) and (7) of that section. [2011 c 60 § 25; 2006 c 348 § 4; 1993 c 2 § 10 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.700.]

*Reviser's note: RCW 42.17.640 through 42.17.790 were recodified as RCW 42.17A.125, 42.17A.405 through 42.17A.415, 42.17A.450 through 42.17A.495, 42.17A.500, 42.17A.560, and 42.17A.565 pursuant to 2010 c 204 § 1102, effective January 1, 2012.

42.17A.442 Contributions by political committees to political committees. (*Effective January 1, 2012.*) A political committee may make a contribution to another political committee only when the contributing political committee has received contributions of ten dollars or more each from at least ten persons registered to vote in Washington state. [2011 c 145 § 5.]

Findings—Intent—Effective date—2011 c 145: See notes following RCW 42.17A.005.

42.17A.705 "Executive state officer" defined. (*Effective January 1, 2012.*) For the purposes of RCW 42.17A.700, "executive state officer" includes:

(1) The chief administrative law judge, the director of agriculture, the director of the department of services for the blind, the chief information officer of the office of chief information officer, the director of the state system of community and technical colleges, the director of commerce, the director of the consolidated technology services agency, the secretary of corrections, the director of early learning, the

director of ecology, the commissioner of employment security, the chair of the energy facility site evaluation council, the director of enterprise services, the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the human resources director, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the executive director of the public disclosure commission, the executive director of the Puget Sound partnership, the director of the recreation and conservation office, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, and each district and each campus president of each state community college;

(2) Each professional staff member of the office of the governor;

(3) Each professional staff member of the legislature; and

(4) Central Washington University board of trustees, the boards of trustees of each community college and each technical college, each member of the state board for community and technical colleges, state convention and trade center board of directors, Eastern Washington University board of trustees, Washington economic development finance authority, Washington energy northwest executive board, The Evergreen State College board of trustees, executive ethics board, fish and wildlife commission, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, higher education coordinating board, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, state investment board, commission on judicial conduct, legislative ethics board, life sciences discovery fund authority board of trustees, liquor control board, lottery commission, Pacific Northwest electric power and conservation planning council, parks and recreation commission, Washington personnel resources board, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public employees' benefits board, recreation and conservation funding board, salmon recovery funding board, shorelines hearings board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington State University board of regents, and Western Washington University board of trustees. [2011 1st

sp.s. c 43 § 109; 2010 c 204 § 902; 2009 c 565 § 24. Prior: 2007 c 341 § 48; 2007 c 241 § 2; 2007 c 15 § 1; 2006 c 265 § 113; 2005 c 424 § 17; prior: 2001 c 36 § 1; 2001 c 9 § 1; 1996 c 186 § 504; prior: 1995 c 399 § 60; 1995 c 397 § 10; prior: 1993 sp.s. c 2 § 18; 1993 c 492 § 488; 1993 c 281 § 43; 1991 c 200 § 404; 1991 c 3 § 293; prior: 1989 1st ex.s. c 9 § 812; 1989 c 279 § 22; 1989 c 158 § 2; 1988 c 36 § 13; 1987 c 504 § 14; 1985 c 6 § 8; 1984 c 34 § 2. Formerly RCW 42.17.2401.]

Effective date—2011 1st sp.s. c 43 § 109: "Section 109 of this act takes effect January 1, 2012." [2011 1st sp.s. c 43 § 111.]

Purpose—2011 1st sp.s. c 43: See note following RCW 43.19.003.

Alphabetization—2010 c 204 § 902: "When RCW 42.17A.705 is codified, the code reviser shall arrange the names of the agencies in each subsection in alphabetical order, arranged according to the first distinctive word of each agency's name." [2010 c 204 § 1101.]

Severability—Effective date—2007 c 341: See RCW 90.71.906 and 90.71.907.

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

Part headings not law—Effective date—Severability—2006 c 265: See RCW 43.215.904 through 43.215.906.

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

42.17A.750 Civil remedies and sanctions—Referral for criminal prosecution. (Effective January 1, 2012.) (1) In addition to the penalties in subsection (2) of this section, and any other remedies provided by law, one or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(a) If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of that election may be held void and a special election held within sixty days of the finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(b) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this chapter, his or her registration may be revoked or suspended and he or she may be enjoined from receiving compensation or making expenditures for lobbying. The imposition of a sanction shall not excuse the lobbyist from filing statements and reports required by this chapter.

(c) A person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation. However, a person or entity who violates RCW 42.17A.405 may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

(d) A person who fails to file a properly completed statement or report within the time required by this chapter may

be subject to a civil penalty of ten dollars per day for each day each delinquency continues.

(e) A person who fails to report a contribution or expenditure as required by this chapter may be subject to a civil penalty equivalent to the amount not reported as required.

(f) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

(2) The commission may refer the following violations for criminal prosecution:

(a) A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor under chapter 9.92 RCW;

(b) A person who, within a five-year period, with actual malice, violates three or more provisions of this chapter is guilty of a gross misdemeanor under chapter 9.92 RCW; and

(c) A person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the commission under this chapter is guilty of a class C felony under chapter 9.94A RCW. [2011 c 145 § 6; 2010 c 204 § 1001; 2006 c 315 § 2; 1993 c 2 § 28 (Initiative Measure No. 134, approved November 3, 1992); 1973 c 1 § 39 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.390.]

Findings—Intent—Effective date—2011 c 145: See notes following RCW 42.17A.005.

Intent—2006 c 315: "It is the intent of the legislature to increase the authority of the public disclosure commission to more effectively foster compliance with our state's public disclosure and fair campaign practices act. It is the intent of the legislature to make the agency's penalty authority for violations of this chapter more consistent with other agencies that enforce state ethics laws and more commensurate with the level of political spending in the state of Washington." [2006 c 315 § 1.]

Severability—2006 c 315: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 315 § 4.]

42.17A.755 Violations—Determination by commission—Penalties—Procedure. (Effective January 1, 2012.)

(1) The commission may (a) determine whether an actual violation of this chapter has occurred; and (b) issue and enforce an appropriate order following such a determination.

(2) The commission, in cases where it chooses to determine whether an actual violation has occurred, shall hold a hearing pursuant to the administrative procedure act, chapter 34.05 RCW, to make a determination. Any order that the commission issues under this section shall be pursuant to such a hearing.

(3) In lieu of holding a hearing or issuing an order under this section, the commission may refer the matter to the attorney general or other enforcement agency as provided in RCW 42.17A.105.

(4) The person against whom an order is directed under this section shall be designated as the respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in RCW 42.17A.750(1) (b) through (e). The commission may assess a penalty in an amount not to exceed ten thousand dollars.

(5) The commission has the authority to waive a fine for a first-time violation. A second violation of the same rule by the same person or individual, regardless if the person or individual committed the violation for a different political committee, shall result in a fine. Succeeding violations of the same rule shall result in successively increased fines.

(6) An order issued by the commission under this section shall be subject to judicial review under the administrative procedure act, chapter 34.05 RCW. If the commission's order is not satisfied and no petition for review is filed within thirty days, the commission may petition a court of competent jurisdiction of any county in which a petition for review could be filed under that section, for an order of enforcement. Proceedings in connection with the commission's petition shall be in accordance with RCW 42.17A.760. [2011 c 145 § 7; 2010 c 204 § 1002; 2006 c 315 § 3; 1989 c 175 § 91; 1985 c 367 § 12; 1982 c 147 § 16; 1975-'76 2nd ex.s. c 112 § 12. Formerly RCW 42.17.395.]

Findings—Intent—Effective date—2011 c 145: See notes following RCW 42.17A.005.

Intent—Severability—2006 c 315: See notes following RCW 42.17A.750.

Additional notes found at www.leg.wa.gov

42.17A.770 Limitation on actions. (Effective January 1, 2012.) Except as provided in RCW 42.17A.765(4)(a)(iv), any action brought under the provisions of this chapter must be commenced within five years after the date when the violation occurred. [2011 c 60 § 26; 2007 c 455 § 2; 1982 c 147 § 18; 1973 c 1 § 41 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.410.]

42.17A.919 Effective date—2011 c 60. This act takes effect January 1, 2012. [2011 c 60 § 53.]

Chapter 42.30 RCW OPEN PUBLIC MEETINGS ACT

Sections

42.30.110 Executive sessions.

42.30.110 Executive sessions. (1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

- (a) To consider matters affecting national security;
- (b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;
- (c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;
- (d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency.

This subsection (1)(i) does not permit a governing body to hold an executive session solely because an attorney representing the agency is present. For purposes of this subsection (1)(i), "potential litigation" means matters protected by RPC 1.6 or RCW 5.60.060(2)(a) concerning:

(i) Litigation that has been specifically threatened to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party;

(ii) Litigation that the agency reasonably believes may be commenced by or against the agency, the governing body, or a member acting in an official capacity; or

(iii) Litigation or legal risks of a proposed action or current practice that the agency has identified when public discussion of the litigation or legal risks is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information;

(l) To consider proprietary or confidential nonpublished information related to the development, acquisition, or imple-

mentation of state purchased health care services as provided in RCW 41.05.026;

(m) To consider in the case of the life sciences discovery fund authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(n) To consider in the case of a health sciences and services authority, the substance of grant applications and grant awards when public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information;

(o) To consider in the case of innovate Washington, the substance of grant or loan applications and grant or loan awards if public knowledge regarding the discussion would reasonably be expected to result in private loss to the providers of this information.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer. [2011 1st sp.s. c 14 § 14; 2010 1st sp.s. c 33 § 5; 2005 c 424 § 13; 2003 c 277 § 1; 2001 c 216 § 1; 1989 c 238 § 2; 1987 c 389 § 3; 1986 c 276 § 8; 1985 c 366 § 2; 1983 c 155 § 3; 1979 c 42 § 1; 1973 c 66 § 2; 1971 ex.s. c 250 § 11.]

Effective date—2011 1st sp.s. c 14: See RCW 43.333.901.

Captions not law—Liberal construction—Severability—Effective dates—2005 c 424: See RCW 43.350.900 through 43.350.903.

Additional notes found at www.leg.wa.gov

Chapter 42.36 RCW

APPEARANCE OF FAIRNESS DOCTRINE—LIMITATIONS

Sections

42.36.040 Public discussion by candidate for public office. *(Effective January 1, 2012.)*

42.36.040 Public discussion by candidate for public office. *(Effective January 1, 2012.)* Prior to declaring as a candidate for public office or while campaigning for public office as defined by RCW 42.17A.005 no public discussion or expression of an opinion by a person subsequently elected to a public office, on any pending or proposed quasi-judicial actions, shall be a violation of the appearance of fairness doctrine. [2011 c 60 § 27; 1982 c 229 § 4.]

Effective date—2011 c 60: See RCW 42.17A.919.

Chapter 42.44 RCW

NOTARIES PUBLIC

Sections

42.44.030 Appointment—Denial for unprofessional conduct—Certificate of appointment. *(Effective October 20, 2011.)*

42.44.220 Military training or experience.

42.44.030 Appointment—Denial for unprofessional conduct—Certificate of appointment. *(Effective October 20, 2011.)* (1) In addition to the unprofessional conduct spec-

ified in RCW 18.235.130, the director may deny appointment as a notary public to any person based on the following conduct, acts, or conditions:

(a) Has had disciplinary action taken against any professional license in this or any other state;

(b) Has engaged in official misconduct as defined in RCW 42.44.160(1), whether or not criminal penalties resulted; or

(c) Has violated any of the provisions of chapter 19.154 RCW.

(2) The director shall deliver a certificate evidencing the appointment to each person appointed as a notary public. The certificate may be signed in facsimile by the governor, the secretary of state, and the director or the director's designee. The certificate must bear a printed seal of the state of Washington. [2011 c 244 § 6; 2002 c 86 § 287; 1985 c 156 § 3.]

Effective date—2011 c 244: See note following RCW 19.154.010.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

42.44.220 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the director determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 18.]

Chapter 42.52 RCW

ETHICS IN PUBLIC SERVICE

Sections

42.52.010 Definitions. *(Effective January 1, 2012.)*

42.52.150 Limitations on gifts. *(Effective January 1, 2012.)*

42.52.180 Use of public resources for political campaigns. *(Effective January 1, 2012.)*

42.52.185 Restrictions on mailings by legislators. *(Effective January 1, 2012.)*

42.52.380 Political activities of board members. *(Effective January 1, 2012.)*

42.52.560 Communications from an employee organization or charitable organization—Distribution by state employee. *(Effective January 1, 2012.)*

42.52.8022 Exemption—Informational or educational meetings regarding legislative issues.

42.52.010 Definitions. *(Effective January 1, 2012.)* Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

(2) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

(3) "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(4) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.

(5) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(6) "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement, or a sales agreement.

(7) "Ethics boards" means the commission on judicial conduct, the legislative ethics board, and the executive ethics board.

(8) "Family" has the same meaning as "immediate family" in RCW 42.17A.005.

(9) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17A RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

(10) "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee, or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

(11) "Honorarium" means money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role.

(12) "Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

(13) "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

(14) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

(15) "Regulatory agency" means any state board, commission, department, or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

(16) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

(17) "State action" means any action on the part of an agency, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(18) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

(19) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes

of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

(20) "Thing of economic value," in addition to its ordinary meaning, includes:

(a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;

(b) An option, irrespective of the conditions to the exercise of the option; and

(c) A promise or undertaking for the present or future delivery or procurement.

(21)(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

(i) Is, or will be, the subject of state action; or

(ii) Is one to which the state is or will be a party; or

(iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

(22) "University" includes "state universities" and "regional universities" as defined in RCW 28B.10.016 and also includes any research or technology institute affiliated with a university, including without limitation, the Spokane Intercollegiate Research and Technology Institute and the Washington Technology Center.

(23) "University research employee" means a state officer or state employee employed by a university, but only to the extent the state officer or state employee is engaged in research, technology transfer, approved consulting activities related to research and technology transfer, or other incidental activities. [2011 c 60 § 28; 2005 c 106 § 1; 1998 c 7 § 1; 1996 c 213 § 1; 1994 c 154 § 101.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date—2011 c 60: See RCW 42.17A.919.

42.52.150 Limitations on gifts. (Effective January 1, 2012.) (1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of deter-

mining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:

(a) Unsolicited flowers, plants, and floral arrangements;

(b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(g) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for deposit in the legislative international trade account created in RCW 43.15.050;

(h) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for the purpose of promoting the expansion of tourism as provided for in *RCW 43.330.090;

(i) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, solicited on behalf of a national legislative association, 2006 official conference of the national lieutenant governors' association, or host committee for the purpose of hosting an official conference under the circumstances specified in RCW 42.52.820 and section 2, chapter 5, Laws of 2006. Anything solicited or accepted may only be received by the national association or host committee and may not be commingled with any funds or accounts that are the property of any person;

(j) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(k) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW 42.52.010 except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter 42.17A RCW. [2011 c 60 § 29; 2006 c 5 § 3; 2003 1st sp.s. c 23 § 2. Prior: 2003 c 265 § 3; 2003 c 153 § 6; 1998 c 7 § 2; 1994 c 154 § 115.]

***Reviser's note:** RCW 43.330.090 was amended by 2007 c 228 § 201, deleting subsection (2) which directly related to "expansion of tourism."

Effective date—2011 c 60: See RCW 42.17A.919.

Findings—2006 c 5: "The legislature finds that due to the massive devastation inflicted on the city of New Orleans by hurricane Katrina on August 29, 2005, the city of New Orleans will not be able to meet its obligation to host the national lieutenant governors' association's annual conference scheduled for July 17 through July 19, 2006. As a result of this unfortunate situation, the members of the national lieutenant governors' association officially pressed to have Washington state host the next annual conference in Seattle, Washington, and lieutenant governor Brad Owen has agreed to do so. The legislature further finds, in recognition of the unprecedented situation created by this natural disaster, the high national visibility of this important event, and due to the limited amount of time remaining for planning and fund-raising, it is necessary to initiate fund-raising activities for this national conference as soon as possible." [2006 c 5 § 1.]

Effective date—2006 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 7, 2006]." [2006 c 5 § 4.]

Findings—2003 c 153: See note following RCW 43.330.090.

42.52.180 Use of public resources for political campaigns. (Effective January 1, 2012.) (1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the pro-

motion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) This section shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(b) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry. For the purposes of this subsection, it is not a violation of this section for an elected official to respond to an inquiry regarding a ballot proposition, to make incidental remarks concerning a ballot proposition in an official communication, or otherwise comment on a ballot proposition without an actual, measurable expenditure of public funds. The ethics boards shall adopt by rule a definition of measurable expenditure;

(c) The maintenance of official legislative web sites throughout the year, regardless of pending elections. The web sites may contain any discretionary material which was also specifically prepared for the legislator in the course of his or her duties as a legislator, including newsletters and press releases. The official legislative web sites of legislators seeking reelection shall not be altered between June 30th and November 15th of the election year. The web site shall not be used for campaign purposes;

(d) Activities that are part of the normal and regular conduct of the office or agency; and

(e) De minimis use of public facilities by statewide elected officials and legislators incidental to the preparation or delivery of permissible communications, including written and verbal communications initiated by them of their views on ballot propositions that foreseeably may affect a matter that falls within their constitutional or statutory responsibilities.

(3) As to state officers and employees, this section operates to the exclusion of RCW 42.17A.555. [2011 c 60 § 30; 2010 c 185 § 1; 1995 c 397 § 30; 1994 c 154 § 118.]

Effective date—2011 c 60: See RCW 42.17A.919.

Additional notes found at www.leg.wa.gov

42.52.185 Restrictions on mailings by legislators. (Effective January 1, 2012.) (1) During the twelve-month period beginning on December 1st of the year before a general election for a state legislator's election to office and continuing through November 30th immediately after the general election, the legislator may not mail, either by regular mail or

electronic mail, to a constituent at public expense a letter, newsletter, brochure, or other piece of literature, except as follows:

(a) The legislator may mail two mailings of newsletters to constituents. All newsletters within each mailing of newsletters must be identical as to their content but not as to the constituent name or address. One such mailing may be mailed no later than thirty days after the start of a regular legislative session, except that a legislator appointed during a regular legislative session to fill a vacant seat may have up to thirty days from the date of appointment to send out the first mailing. The other mailing may be mailed no later than sixty days after the end of a regular legislative session.

(b) The legislator may mail an individual letter to (i) an individual constituent who has contacted the legislator regarding the subject matter of the letter during the legislator's current term of office; (ii) an individual constituent who holds a governmental office with jurisdiction over the subject matter of the letter; or (iii) an individual constituent who has received an award or honor of extraordinary distinction of a type that is sufficiently infrequent to be noteworthy to a reasonable person, including, but not limited to: (A) An international or national award such as the Nobel prize or the Pulitzer prize; (B) a state award such as Washington scholar; (C) an Eagle Scout award; and (D) a Medal of Honor.

(c) In those cases where constituents have specifically indicated that they would like to be contacted to receive regular or periodic updates on legislative matters, legislators may provide such updates by electronic mail throughout the legislative session and up until thirty days from the conclusion of a legislative session.

(2) For purposes of subsection (1) of this section, "legislator" means a legislator who is a "candidate," as defined by RCW 42.17A.005, for any public office.

(3) A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.52.180.

(4) The house of representatives and senate shall specifically limit expenditures per member for the total cost of mailings. Those costs include, but are not limited to, production costs, printing costs, and postage costs. The limits imposed under this subsection apply only to the total expenditures on mailings per member and not to any categorical cost within the total.

(5) For purposes of this section, persons residing outside the legislative district represented by the legislator are not considered to be constituents, but students, military personnel, or others temporarily employed outside of the district who normally reside in the district are considered to be constituents. [2011 c 60 § 31; 2008 c 39 § 2; 1997 c 320 § 1; 1995 c 397 § 5; 1993 c 2 § 25 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.132.]

Effective date—2011 c 60: See RCW 42.17A.919.

Findings—Intent—2008 c 39: "The legislature finds that the legislature's ability to communicate with its constituency is of the utmost importance in having a healthy representative democracy. It is the intent of the legislature to provide important information to constituents on an ongoing basis in order to truly be a government of the people and for the people. The legislature finds that this communication will only increase citizen access to legislative issues." [2008 c 39 § 1.]

42.52.380 Political activities of board members. (Effective January 1, 2012.) (1) No member of the executive ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time nonpartisan office; (b) be an officer of any political party or political committee as defined in chapter 42.17A RCW other than the position of precinct committeeperson; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any state candidate or state ballot measure; or (d) lobby or control, direct, or assist a lobbyist except that such member may appear before any committee of the legislature on matters pertaining to this chapter.

(2) No citizen member of the legislative ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time nonpartisan office; (b) be an officer of any political party or political committee as defined in chapter 42.17A RCW, other than the position of precinct committeeperson; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any legislative candidate, any legislative caucus campaign committee that supports or opposes legislative candidates, or any political action committee that supports or opposes legislative candidates; or (d) engage in lobbying in the legislative branch under circumstances not exempt, under RCW 42.17A.610, from lobbyist registration and reporting.

(3) No citizen member of the legislative ethics board may hold or campaign for a seat in the state house of representatives or the state senate within two years of serving on the board if the citizen member opposes an incumbent who has been the respondent in a complaint before the board. [2011 c 60 § 32; 1997 c 11 § 1; 1994 c 154 § 208.]

Effective date—2011 c 60: See RCW 42.17A.919.

42.52.560 Communications from an employee organization or charitable organization—Distribution by state employee. (Effective January 1, 2012.) (1) Nothing in this chapter prohibits a state employee from distributing communications from an employee organization or charitable organization to other state employees if the communications do not support or oppose a ballot proposition or candidate for federal, state, or local public office. Nothing in this section shall be construed to authorize any lobbying activity with public funds beyond the activity permitted by RCW 42.17A.635.

(2) "Employee organization," for purposes of this section, means any organization, union, or association in which employees participate and that exists for the purpose of collective bargaining with employers or for the purpose of opposing collective bargaining or certification of a union. [2011 c 60 § 33; 2006 c 217 § 1.]

Effective date—2011 c 60: See RCW 42.17A.919.

42.52.8022 Exemption—Informational or educational meetings regarding legislative issues. This chapter does not prohibit state employees from attending informational or educational meetings regarding legislative issues with a legislator or other elected official. It is not a violation of this chapter to hold such meetings in public facilities,

including state-owned or leased buildings. This section is not intended to allow the use of state facilities for a political campaign or for the promotion of or opposition to a ballot proposition. [2011 c 63 § 1.]

Chapter 42.56 RCW
PUBLIC RECORDS ACT

Sections

42.56.230	Personal information. (<i>Effective until January 1, 2012.</i>)
42.56.230	Personal information. (<i>Effective January 1, 2012.</i>)
42.56.270	Financial, commercial, and proprietary information.
42.56.400	Insurance and financial institutions. (<i>Effective July 1, 2012.</i>)
42.56.550	Judicial review of agency actions.
42.56.565	Inspection or copying by persons serving criminal sentences—Injunction.

42.56.230 Personal information. (*Effective until January 1, 2012.*) The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) Personal information, including but not limited to, addresses, telephone numbers, personal electronic mail addresses, social security numbers, emergency contact and date of birth information for a participant in a public or non-profit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs. Emergency contact information may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and

(7) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identocard. [2011 c 173 § 1; 2010 c 106 § 102; 2009 c 510 § 8; 2008 c 200 § 5; 2005 c 274 § 403.]

Effective date—2010 c 106: See note following RCW 35.102.145.

Effective date—2009 c 510: See RCW 31.45.901.

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

[2011 RCW Supp—page 832]

42.56.230 Personal information. (*Effective January 1, 2012.*) The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) Personal information, including but not limited to, addresses, telephone numbers, personal electronic mail addresses, social security numbers, emergency contact and date of birth information for a participant in a public or non-profit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs. Emergency contact information may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and

(7)(a) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identocard.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system. [2011 c 350 § 2; 2011 c 173 § 1; 2010 c 106 § 102; 2009 c 510 § 8; 2008 c 200 § 5; 2005 c 274 § 403.]

Reviser's note: This section was amended by 2011 c 173 § 1 and by 2011 c 350 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2011 c 350: See note following RCW 46.20.111.

Effective date—2010 c 106: See note following RCW 35.102.145.

Effective date—2009 c 510: See RCW 31.45.901.

Finding—Intent—Liberal construction—2009 c 510: See note following RCW 31.45.010.

42.56.270 Financial, commercial, and proprietary information. The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW

28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information; and

(21) Financial, commercial, operations, and technical and research information and data submitted to or obtained by innovate Washington in applications for, or delivery of, grants and loans under chapter 43.333 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information. [2011 1st sp.s. c 14 § 15; 2009 c 394 § 3; 2008 c 306 § 1. Prior: 2007 c 470 § 2; (2007 c 470 § 1 expired June 30, 2008); 2007 c 251 § 13; (2007 c 251 § 12 expired June 30, 2008); 2007 c 197 § 4; (2007 c 197 § 3 expired June 30, 2008); prior: 2006 c 369 § 2; 2006 c 341 § 6; 2006 c 338 § 5; 2006 c 302 § 12; 2006 c 209 § 7; 2006 c 183 § 37; 2006 c 171 § 8; 2005 c 274 § 407.]

Effective date—2011 1st sp.s. c 14: See RCW 43.333.901.

Intent—2009 c 394: See note following RCW 28B.20.150.

Effective date—2008 c 306 § 1: "Section 1 of this act takes effect June 30, 2008." [2008 c 306 § 2.]

Effective date—2007 c 470 § 2: "Section 2 of this act takes effect June 30, 2008." [2007 c 470 § 4.]

Expiration date—2007 c 470 § 1: "Section 1 of this act expires June 30, 2008." [2007 c 470 § 3.]

Effective date—2007 c 251 § 13: "Section 13 of this act takes effect June 30, 2008." [2007 c 251 § 18.]

Expiration date—2007 c 251 § 12: "Section 12 of this act expires June 30, 2008." [2007 c 251 § 17.]

Captions not law—Severability—2007 c 251: See notes following RCW 35.104.010.

Effective date—2007 c 197 § 4: "Section 4 of this act takes effect June 30, 2008." [2007 c 197 § 11.]

Expiration date—2007 c 197 § 3: "Section 3 of this act expires June 30, 2008." [2007 c 197 § 10.]

Effective date—2006 c 369 § 2: "Section 2 of this act takes effect July 1, 2006." [2006 c 369 § 3.]

Effective date—2006 c 341 § 6: "Section 6 of this act takes effect July 1, 2006." [2006 c 341 § 7.]

Findings—Intent—2006 c 338: See note following RCW 19.112.110.

Effective date—Severability—2006 c 338: See RCW 19.112.903 and 19.112.904.

Effective date—2006 c 302 §§ 10 and 12: See note following RCW 66.28.180.

Construction—Severability—Effective date—2006 c 183: See RCW 70.95N.900 through 70.95N.902.

Effective date—2006 c 171 §§ 8 and 10: "Sections 8 and 10 of this act take effect July 1, 2006." [2006 c 171 § 13.]

Findings—Severability—2006 c 171: See RCW 43.325.001 and 43.325.901.

42.56.400 Insurance and financial institutions. (*Effective July 1, 2012.*) The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW

41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151; and

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010. [2011 c 188 § 21. Prior: 2010 c 172 § 2; 2010 c 97 § 3; 2009 c 104 § 23; prior: 2007 c 197 § 7; 2007 c 117 § 36; 2007 c 82 § 17; prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

Effective date—2011 c 188: See RCW 48.13.900.

Severability—Effective date—2007 c 117: See RCW 48.17.900 and 48.17.901.

Severability—Effective date—2006 c 284: See RCW 48.135.900 and 48.135.901.

Effective date—2006 c 8 §§ 112 and 210: See note following RCW 42.56.360.

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

42.56.550 Judicial review of agency actions. (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such per-

son an amount not to exceed one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis. [2011 c 273 § 1. Prior: 2005 c 483 § 5; 2005 c 274 § 288; 1992 c 139 § 8; 1987 c 403 § 5; 1975 1st ex.s. c 294 § 20; 1973 c 1 § 34 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.340.]

Intent—Severability—1987 c 403: See notes following RCW 42.56.050.

Application of chapter 300, Laws of 2011: See note following RCW 42.56.565.

42.56.565 Inspection or copying by persons serving criminal sentences—Injunction. (1) A court shall not award penalties under RCW 42.56.550(4) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.

(2) The inspection or copying of any nonexempt public record by persons serving criminal sentences in state, local, or privately operated correctional facilities may be enjoined pursuant to this section.

(a) The injunction may be requested by: (i) An agency or its representative; (ii) a person named in the record or his or her representative; or (iii) a person to whom the requests specifically pertains or his or her representative.

(b) The request must be filed in: (i) The superior court in which the movant resides; or (ii) the superior court in the county in which the record is maintained.

(c) In order to issue an injunction, the court must find that:

(i) The request was made to harass or intimidate the agency or its employees;

(ii) Fulfilling the request would likely threaten the security of correctional facilities;

(iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or

(iv) Fulfilling the request may assist criminal activity.

(3) In deciding whether to enjoin a request under subsection (2) of this section, the court may consider all relevant factors including, but not limited to:

(a) Other requests by the requestor;

(b) The type of record or records sought;

(c) Statements offered by the requestor concerning the purpose for the request;

(d) Whether disclosure of the requested records would likely harm any person or vital government interest;

(e) Whether the request seeks a significant and burdensome number of documents;

(f) The impact of disclosure on correctional facility security and order, the safety or security of correctional facility staff, inmates, or others; and

(g) The deterrence of criminal activity.

(4) The motion proceeding described in this section shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise. Upon a showing by a preponderance of the evidence, the court may enjoin all or any part of a request or requests. Based on the evidence, the court may also enjoin, for a period of time the court deems reasonable, future requests by:

(a) The same requestor; or

(b) An entity owned or controlled in whole or in part by the same requestor.

(5) An agency shall not be liable for penalties under RCW 42.56.550(4) for any period during which an order under this section is in effect, including during an appeal of an order under this section, regardless of the outcome of the appeal. [2011 c 300 § 1; 2009 c 10 § 1.]

Application—2011 c 300: "This act applies to all actions brought under RCW 42.56.550 in which final judgment has not been entered as of July 22, 2011." [2011 c 300 § 2.]

Effective date—2009 c 10: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 20, 2009]." [2009 c 10 § 2.]